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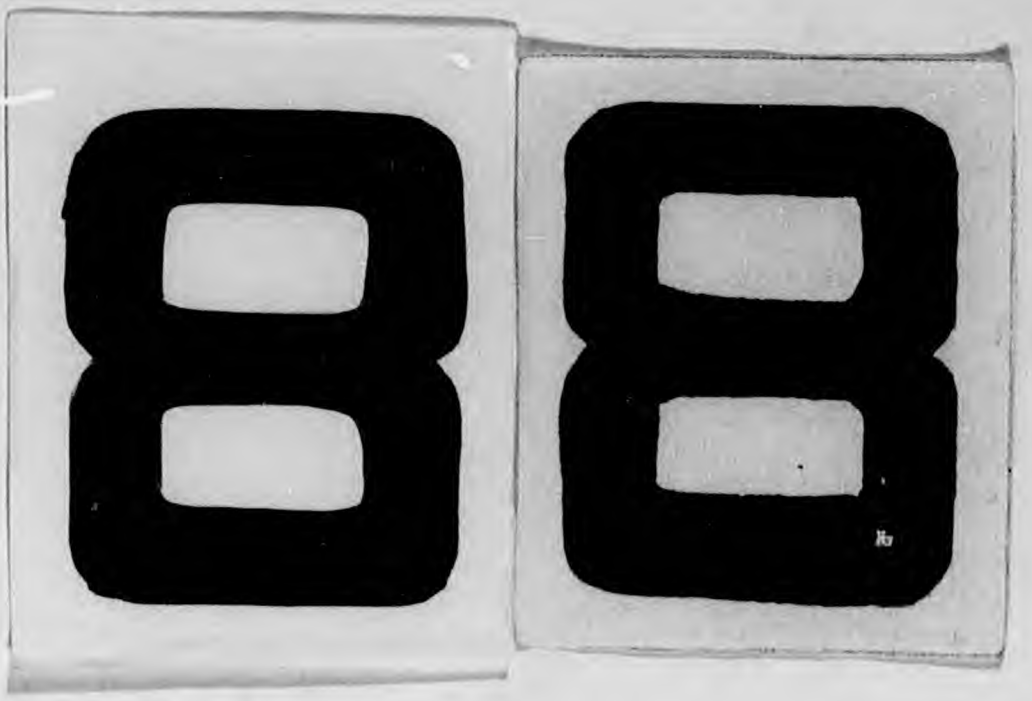

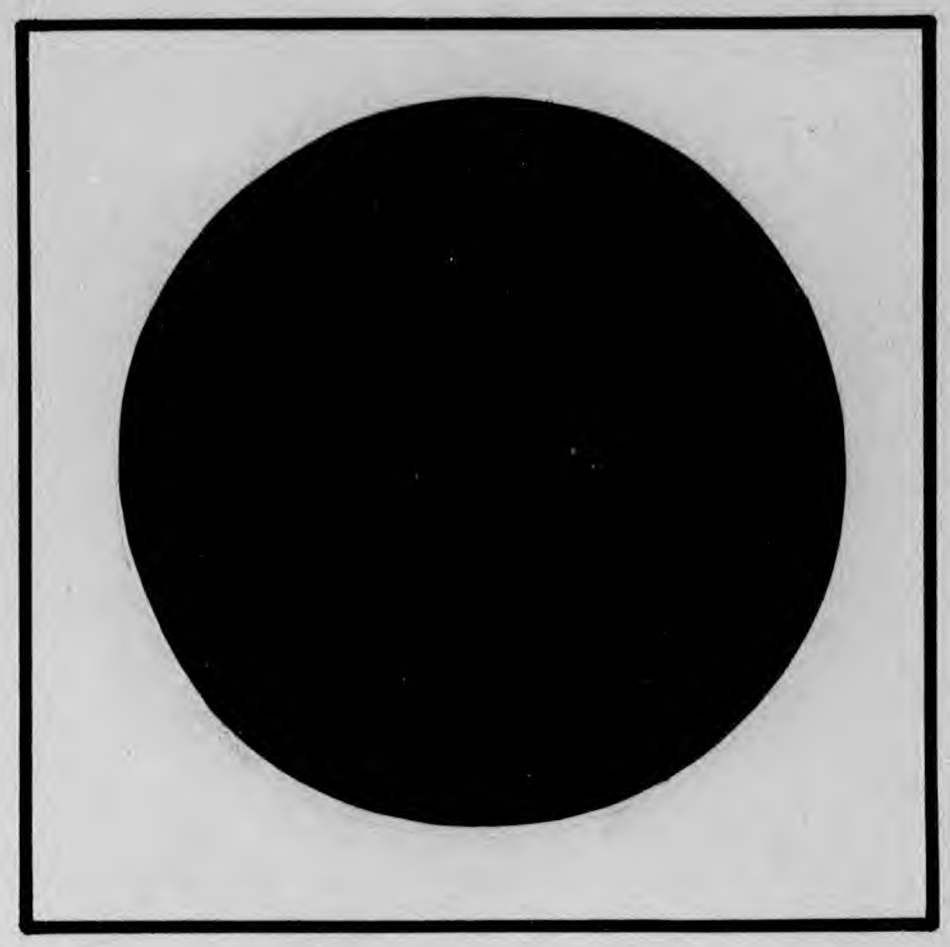

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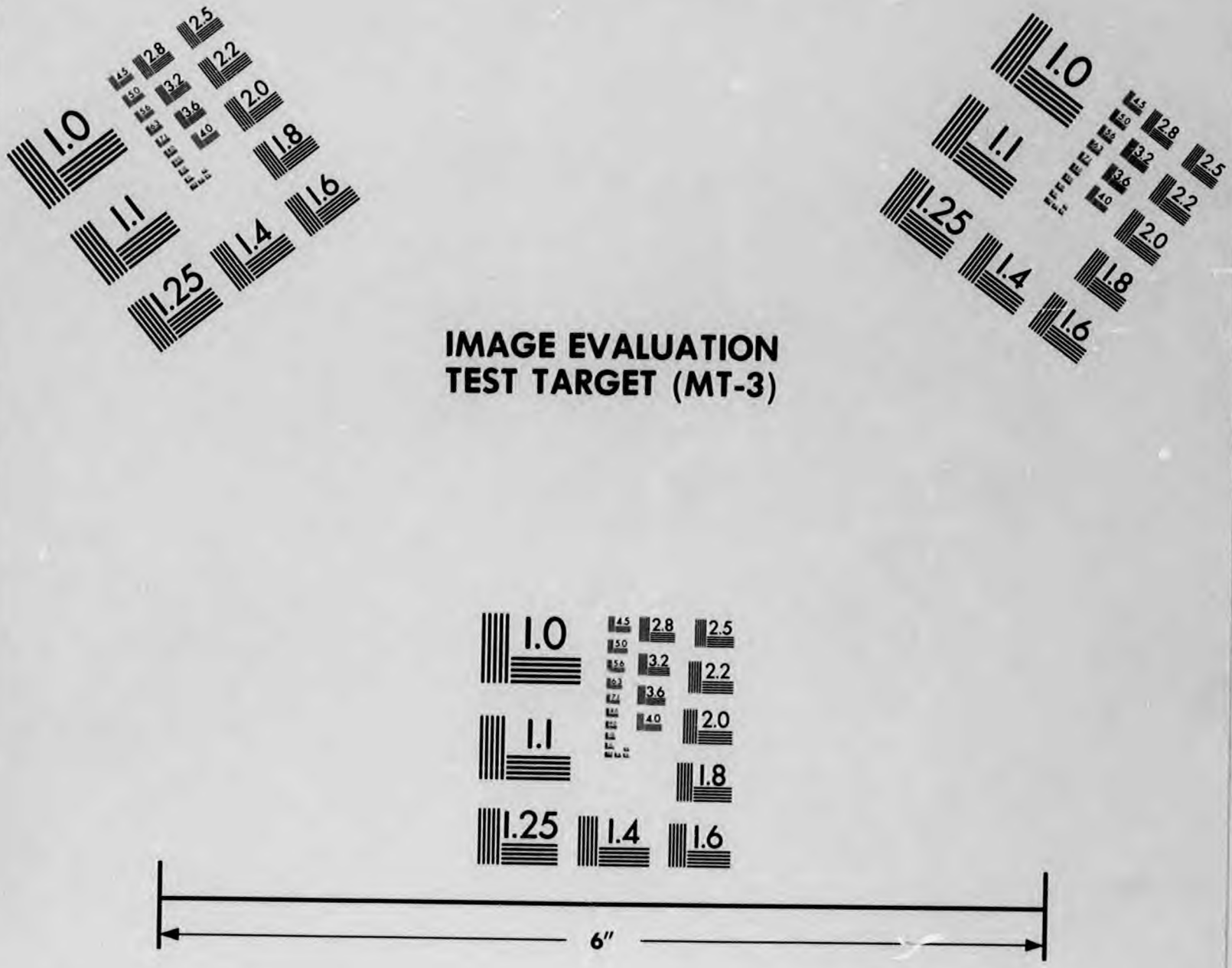

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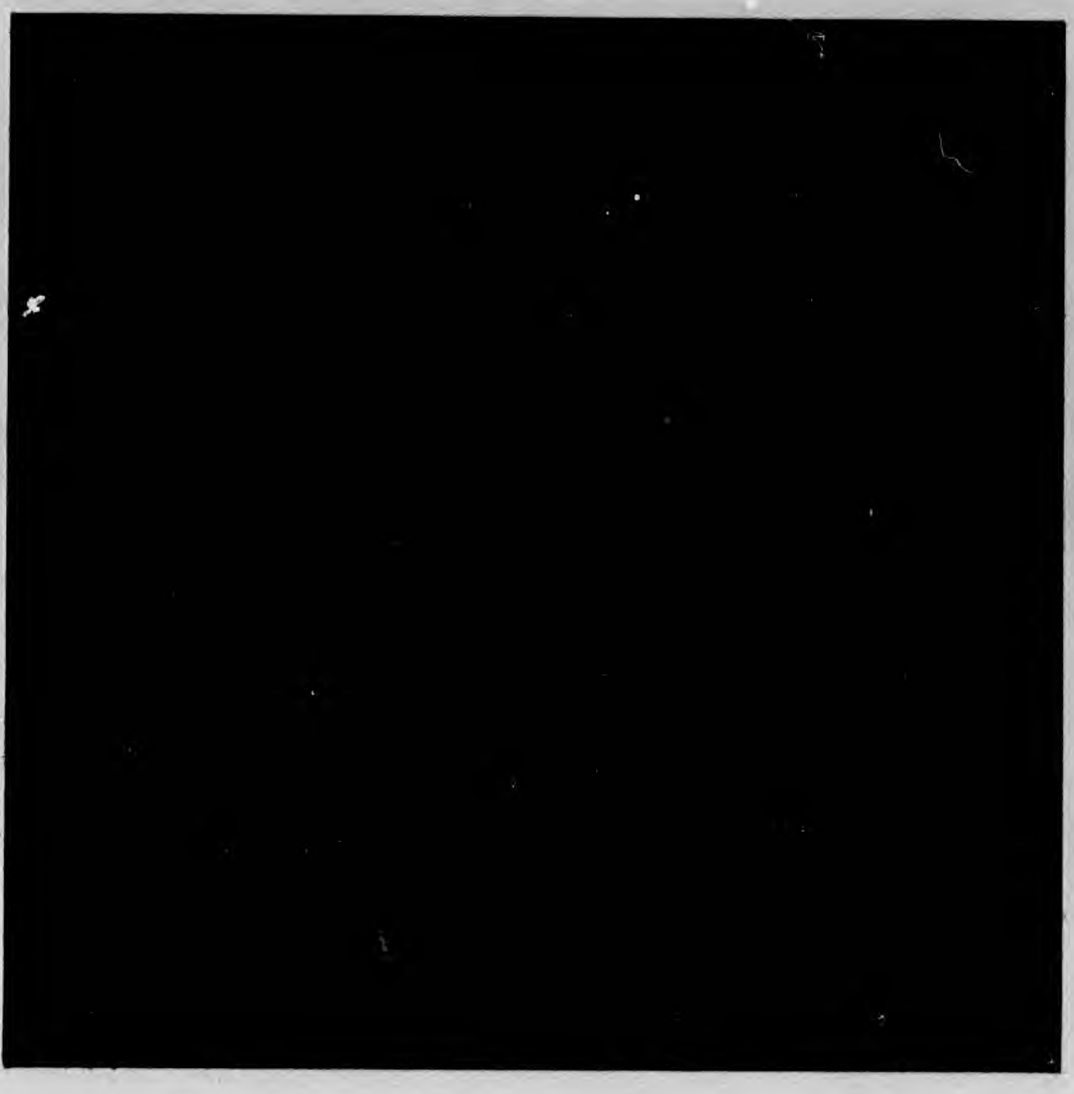

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WAR CRIMES TRIAL STATUS REPORT

GHQ, SCAP, LEGAL SECTION, MANILA BRANCH 2048
(Reporting Office)

File Number P-34 Date of Report 3 January 1947

Title of Case U. S. A. vs. Tokujiro YOSHIDA

PART A

1. Names and Nationalities of Accused:

Tokujiro YOSHIDA - Japanese

2. Nature, Place and Date of Offense:

Murder, torture, assaults and mistreatments of Filipino civilians at Buguey, Cagayan Province, Philippine Islands, during the month of March 1945.

3. Names and Nationalities of Victims:

Jesus Pagador - Filipino
Wincislao (Mincing) Tabilis - Filipino
Sidro Unico - Filipino
Jacinto Alonzo - Filipino
Toribio Navarro - Filipino
Valeriano Tabuzo - Filipino

Also 3 unidentified Filipino civilians.

4. Probable Place and Date of Trial:

High Commissioner's Residence, Manila, Philippine Islands, 25 May 1946.

PART B

5. Place and Date of Trial:

High Commissioner's Residence, Manila, Philippine Islands.

Arraignment - 25 May 1946

Trial - 25 May 1946

(Over)

WD AGO Form R-5392
21 June 1946

Exc #6

Inclosure 2 to WD Letter (AGAM-PM 00 .5 (20 Jun 46) WDSCA) 21 June 1946.

6. Judgment and Sentence (Relate to Specific Accused)

Tokujiro YOSHIDA - 29 May 1946, Guilty, death by hanging.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

Tokujiro YOSHIDA - 24 June 1946, sentence approved, execution withheld by Lieutenant General W. D. Styer, C. G., AFWESPAC, pending action of Confirming Authority.

---

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

Tokujiro YOSHIDA - 16 July 1946, sentenced confirmed and ordered executed by General of the Army, Douglas MacArthur, SCAP, under the supervision of, and at the time and place to be designated by the C. G., AFWESPAC.

---

9. Date and Place of Execution of Sentence:

31 August 1946 - Laguna Province, Philippine Islands.

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. D.

25-8962A-300

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

GHQ, SCAP, LEGAL SECTION, MANILA BRANCH
(Reporting Office)

2048

File Number P-34 Date of Report 3 January 1947

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Jacinto Alonzo	- Filipino
Toribio Navarro	- Filipino
Valeriano Tabuzo	- Filipino

Also 3 unidentified Filipino civilians.

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WD AGO Form R-5392
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(Over)

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25-89621-300

HEADQUARTERS ARR/vc/rre
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL

APO 707
6 September 1946

WJA 000.5

SUBJECT: Execution of War Criminals Nakamura and Yoshida.

TO : Commander-in-Chief, United States Army Forces Pacific, APO 500.
Attention: Theater Judge Advocate.

Japanese war criminals Takeo Nakamura and Takujiro Yoshida, were each executed upon 31 August 1946 pursuant to AFPAC Military Commission Orders Number 28, dated 31 July 1946 and Military Commission Orders Number 27, dated 18 July 1946.

FOR THE COMMANDING GENERAL:

Duplicate Copy

lee to
Legal Section SCAP (Manila Branch)
Executive Officer, War Crimes Trial.

BRANCH OFFICE OF THE JUDGE ADVOCATE GENERAL
ARMY SERVICE FORCES

HEADQUARTERS AMH/leg
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL

GSJA 000.5 APO 707
27 August 1946

SUBJECT: Execution of Sentence.

TO : Commanding Officer, Luzon POW #1, APO 75.

1. Your attention is directed to Military Commission Orders No. 28, dated 31 July 1946, issued from General Headquarters, United States Army Forces, Pacific, confirming the (US 2135) death sentence by hanging of Takeo NaMamura (51J14680), adjudged in the case of Takeo Nakamura et al.

2. Your attention is also directed to Military Commission Orders No. 27, dated 18 July 1946, issued from General Headquarters, United States Army Forces, Pacific, confirming (US 2047) the death sentence by hanging of Takujira Yoshida (51J17387), adjudged in the case of Takujira Yoshida.

3. In accordance with Memorandum from Commanding General, AFWESPAC, directed to the Provost Marshal, AFWESPAC, dated 21 August 1946, subject: "Instructions Governing the Execution of Japanese War Criminals," you are hereby directed to execute the sentences as to these condemned war criminals, stripped of uniform, decorations and other appurtenences signifying membership in the military profession, as follows:

Place of Execution: Luzon POW Camp #1.

Time of Execution: 31 August 1946, at hours to be fixed by you.

Order Execution: Takeo Nakamura first; Takujira Yoshida last.

4. The classification of this directive shall remain "SECRET" until one day after the date of execution, at which time it shall become "RESTRICTED."

J. G. CHRISTIANSEN
Major General, U. S. Army
Commanding

2 Incls:
AFPAC WCO
Nos. 27 & 28.

BRANCH OFFICE OF THE JUDGE ADVOCATE GENERAL
ARMY SERVICE FORCES

HEADQUARTERS
LUZON PRISONER OF WAR CAMP NO. 1
APO 75

31 August 1946

MEMORANDUM TO: Commanding General, AFWESPAC, APO 707.

SUBJECT: Report on Execution of Japanese.

1. In compliance with paragraph 4, of your SECRET Memorandum to Commanding General, Base X, and Adjutant General, AFWESPAC, dated 11 February 1946, the following report is submitted:

a. As ordered by your SECRET letter, Subject: Execution of Sentence, GSJA 000.5, the following named Japanese were executed by hanging at this Center on 31 August 1946 at the hours indicated below:

Nakamura, Takeo	Trap Sprung at 1900. Pronounced dead at 1913.
Yoshida, Takujira	Trap Sprung at 1915. Pronounced dead at 1930.

b. The condemned prisoners if they so requested were accompanied to the place of execution by a priest of their religious preference and where necessary an interpreter.

c. The letter ordering the execution was read to the prisoners at 1700, 31 August 1946.

d. Behavior:
(1) Nakamura, Takeo - Calm
(2) Yoshida, Takujira - Calm

e. Final Statements:
(1) Nakamura, Takeo - None
(2) Yoshida, Takujira - None

f. The bodies of the condemned and all concerned in the execution departed the place of execution at 1930 hours, 31 August 1946.

g. Strict compliance with all instructions of higher headquarters contained in memoranda and letters referred to in this communication were adhered to and all attendant duties were processed expeditiously.

/s/ Napoleon Rainbolt
NAPOLEON RAINBOLT
Lt Colonel, CMP
Commanding

BRANCH OFFICE OF THE JUDGE ADVOCATE GENERAL
ARMY SERVICE FORCES

U.S. 201

GENERAL HEADQUARTERS
UNITED STATES ARMY FORCES, PACIFIC

Military Commission)
:
Orders No.....27)

APO 500
18 July 1946

Before a Military Commission which convened at the High Commissioner's Residence, Manila, Philippine Islands, on 25 May 1946, pursuant to Letter Order, File AG 000.5 (5 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 5 December 1945, subject: Regulations Governing the Trials of Accused War Criminals; Letter Order, File AG 000.5 (27 March 46) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 27 March 1946, with indorsement thereto, subject: Trial of Takujira Yoshida; and paragraph 22, Special Orders Number 118, Headquarters, United States Army Forces, Western Pacific, 23 May 1946, was arraigned and tried:

Captain Tokujiro Yoshida, Imperial Japanese Army.

CHARGE: That Tokujiro YOSHIDA, an officer in the Imperial Japanese Armed Forces, at the places and on the dates hereinafter specified during a time of war between the United States of America, its allies and dependencies and Japan, did wrongfully fail to discharge his military duty and did otherwise commit high crimes in that he ordered, directed, permitted and participated in the brutal and wrongful wounding and killing without cause or trial, of unarmed Filipino civilians and thereby violated the laws of war.

Specification 1: In that Tokujiro YOSHIDA did, during the latter part of May 1945 at Buguey, Cagayan Province, Luzon, Philippine Islands, unlawfully order, direct and permit members of the Imperial Japanese Armed Forces under his command and control unlawfully to kill Jesus PAGADOR, Wincislao (Hinoing) TABILIS, Sidro UNICO and three other unarmed civilians, and did himself participate in the crime, in violation of the laws of war.

Specification 2: In that Tokujiro YOSHIDA did, during the latter part of May 1945 at Buguey, Cagayan Province, Luzon, Philippine Islands, unlawfully order, direct and permit members of the Imperial Japanese Armed Forces under his command and control unlawfully to wound and attempt to kill Jacinto ALONZO, Toribio NAVARRO and Valeriano TABUZO, unarmed civilians, and did himself participate in the crime, in violation of the laws of war.

PLEAS

To all Specifications and the Charge: Not Guilty

FINDINGS

Of Specification 1: Guilty, except the word "three," substituting therefor the word "two"; of the excepted word, Not guilty; of the substituted word, Guilty

Of Specification 2: Guilty

Of the Charge: Guilty

SENTENCE

Death by hanging.

The sentence was adjudged 29 May 1946.

The following is the action of the reviewing authority:

"HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL
APO 707

24 June 1946

In the foregoing case of the United States vs. Captain Tokujiro YOSHIDA, 51J-17387, of Imperial Japanese Armed Forces, the sentence is approved. Pursuant to paragraph 2, 1st Indorsement, General Headquarters, United States Army Forces, Pacific, 27 March 1946, to Letter, General Headquarters, Supreme Commander for the Allied Powers, file AG 000.5 (27 Mar 46)LS, Subject: Trial of Takujira Yoshida, 27 March 1946, the execution of the sentence is withheld pending the action of the Supreme Commander for the Allied Powers.

(signed) W. D. Styer
(typed) W. D. STYER
Lieutenant General, United States Army
Commanding"

The following is the action of the confirming authority:

"GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

APO 500
16 July 1946

(MCO 27)

In the foregoing case of Captain Tokujiro Yoshida, 51J-17387, Imperial Japanese Army, the sentence is confirmed and will be duly executed under the supervision of and at a time and place to be designated by the Commanding General, United States Army Forces, Western Pacific.

(signed) Douglas MacArthur
(typed) DOUGLAS MacARTHUR
General of the Army, United States Army
Supreme Commander"

BY COMMAND OF GENERAL MacARTHUR:

PAUL J. MUELLER,
Major General, General Staff Corps,
Chief of Staff.

OFFICIAL:

John B. Cooley

JOHN B. COOLEY,
Colonel, AGD,
Adjutant General.

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL
APO 707

24 June 1946

In the foregoing case of the United States vs. Captain Tokujiro YOSHIDA, 51J-17387, of Imperial Japanese Armed Forces, the sentence is approved. Pursuant to paragraph 2, 1st Indorsement, General Headquarters, United States Army Forces, Pacific, 27 March 1946, to Letter, General Headquarters, Supreme Commander for the Allied Powers, file AG 000.5 (27 Mar 46) LS, Subject: Trial of Takujira Yoshida, 27 March 1946, the execution of the sentence is withheld pending the action of the Supreme Commander for the Allied Powers.

W. D. STYER
Lieutenant General, United States Army
Commanding

AMH/HCG/at

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE STAFF JUDGE ADVOCATE
APO 707

19 June 1946

UNITED STATES	Place of Trial:	High Commissioner's Residence, Manila, P. I.
vs.	Arraigned :	25 May 1946
TOKUJIRO YOSHIDA	Tried :	25-27 May 1946
	Sentenced :	29 May 1946

X - X

CHARGE

That accused, an officer of the Imperial Japanese Armed Forces, at the places and on the dates hereinafter specified, during a time of war between the United States and its Allies and Japan, did wrongfully fail to discharge his military duty and did otherwise commit high crimes in that he ordered, directed, permitted and participated in the brutal and wrongful wounding and killing without cause or trial, of unarmed Filipino civilians and thereby violated the laws of war (R 7).

SPECIFICATIONS

That accused, during the latter part of May, 1945 at Buguey, Cagayan Province, Luzon, Philippine Islands, did, in violation of the laws of war, unlawfully order, direct and permit members of the Imperial Japanese Armed Forces under his command and control, to

1. kill Jesus PAGADOR, Wincislao TABILIS, Sidro UNICO and three other unarmed civilians; and,

2. wound and attempt to kill Jacinto ALONZO, Toribio NAVARRO and Valeriano TABUZO;

and did himself participate in said crimes (R 7-8).

PLEA

Not Guilty (R 10).

FINDINGS AND SENTENCE

The Commission in closed session and upon secret written ballot, two-thirds or more of the members present at the time the vote was taken concurring, found the accused:

Of Specification 1, as amended: Guilty, except the word "three", substituting therefor the word "two"; of the excepted word, Not Guilty; of the substituted word, Guilty.

Of Specification 2, as amended: Guilty.

Of the Charge: Guilty.

and sentenced him to death by hanging (R 118-9).

I. ARRAIGNMENT:

A. At the time of arraignment the Commission, pursuant to duly published and authenticated orders (R 2-4, Pros Exh 1 & 2) was composed of Col Archibald L. Parmelee, Col Bernard E. Conway, Lt Col Starley N. Boykin, Lt Col Rafael A. Monserrat, and Capt Glenn W. Hendricks (R 3, 4).

B. The prosecution was conducted by Lt Frank J. Eberharter, and the defense by Lts. John J. Barry and Everett W. Thode (R 3). The chief defense counsel stated it was the accused's desire he be represented by the regularly appointed defense counsel (R 6).

C. The reporters, interpreters, prosecution and Commission were sworn (R 4-5).

D. A personal interpreter was furnished the accused and it was agreed it would not be necessary to translate the proceedings in open court but the defense reserved the right at any time to request any part or all of proceeding be translated by the official Commission interpreter (R 1).

E. The rights of the accused as set forth in paragraph 5b of the Regulations governing these trials (Pros Exh No. 1) were read and translated to the accused (R 5).

F. The Commission found a certified copy of the Charge and Specifications, together with a true and complete translation thereof, were served on the accused on 4 April 1946 and 24 May 1946 (R 6).

G. The prosecution moved the Commission that the Specifications be amended by substituting for "the latter part of March 1945" "the latter part of May 1945". There being no objection on the part of the defense, it was so ordered (R 6, 9).

H. It was stipulated among the prosecution, the defense counsel and the accused that the correct name, rank and internment serial number of the accused is "TOKUJIRO YOSHIDA, CAPTAIN, 51J-17387" (R 9-10).

I. The accused pleaded "Not Guilty" to the Charge and Specifications (R 10).

II. TRIAL:

A. Formal matters.

1. Each witness was duly sworn before testifying, and in the event there was an interruption in his testimony he was, on resuming the stand, admonished he was still under oath.

2. An additional reporter was sworn (R 118).

B. Prosecution Evidence.

Valeriano Tabuso, Toribio Navarro, Jacinto Alonso, Zoilo Tabuzo, Sidro Unico, Wincislao Tabilis, Juan Tabin and Jesus Pagador were asleep in a house in Buguey, Cagayan, 23 May 1945 (R 12, 25, 41), when they were aroused and taken by Japanese to their local garrison where the first two named were held about twenty minutes (R 13, 26, 43-4) then taken with Juan Tabin to a well by the remains of the municipal building, had their hands tied and the Japanese prepared to bayonet them (R 16, 27). The accused was at the garrison and witnesses identified him in the courtroom (R 14, 29-30, 44-5, 51, 55). Navarro

received a bayonet thrust but ran away (R 16, 18, 27). Yoshida was about 15 meters away and speaking louldy to soldiers (R 17-8) then V. Tabuzo ran away and was shot in the arm (See Pros Exh Nos. 3 and 4). Witness Tabuzo had known accused in Paddaya (R 23). None of captured was questioned or tried (R 15-6, 27, 47) and none was armed (R 32, 41-2), though two of these killed were guerrillas (R 23, 24, 33). Of the eight, witness Navarro has seen only V. Tabuzo and Jacinto Alonzo (R 32), and has never heard of the other being alive (R 38). This witness went to visit the well near the municipal building after the Japanese had surrendered and recognized clothing of his companions taken therefrom (R 31-2). Witness Alonzo was in group of five held in front of the garrison about an hour (R 42) and then taken to well where all five were bayoneted and thrown into the well (R 43-4). He escaped from the well (R 52) and later visited it finding some clothes and hair of those bayoneted with him (R 48-9). Z. Tabuzo, W. Tobilis, S. Uniso, J. Pagador and himself were in the group bayoneted and thrown in the well and there was one in the well unknown to him (R 55-6).

Schimekichi Kido was commanded by the accused, whom he identified in court, in Buguey from early May to late June, 1945 (R 58-9). He identified a statement written by himself (R 61) and said it was true and made without force but he may have been fooled about getting to go home if he made it (R 63-5). He stated a Cpl Matsumoto was seen by him, 23 May 1945, late at night bringing in some civilians (R 61-3).

Noel Tsuneishi who acted as interpreter when Kido was interviewed (R 66-7) discussed translation of what Kido wrote, that is, whether Kido "heard Capt Yoshida give the order" or he "heard that" he gave the order. The witness, from further questioning of Kido, believes the former was intended (R 68-9).

The statement was introduced into evidence as Prosecution Exhibits Nos. 10 and 10A and read into the record (R 69). Briefly, the statement says towards the end of May, 1945, nine civilians were captured of whom seven were bayoneted and put in a well and two escaped, one being shot. Captain Yoshida captured these civilians and ordered Sgt Kunitake and about ten of his men to bayonet them. A report was made to Captain Yoshida. There were no courts-martial nor special trials (R 70-1). This witness stated on the basis of the statement itself the translation could be that Sgt Kido heard that Yoshida ordered bayoneting (R 72).

C. Defense Evidence.

The accused, Tokujiro Yoshida, took the stand in his own behalf and stated he was in Paddaya in October, 1944 and January 1945 where his duty was to watch for American landings (R 75). There was almost daily bombing in and around Buguey so civilians were excluded from the zone (R 76-7). Guerrilla activity was at a minimum but civilians were signaling Americans (R 77-8). He was in Buguey 23 May 1945 on way to the mountains (R 78) and saw Cpl Matsumoto bring nine prisoners into town about that date (R 79-80, 95-6). The corporal said they all had possessed bolos and the lights were on in the house where he found them. He was taking them to his unit (R 80). The witness says he never saw the civilians after that, doesn't know what happened to them and had nothing to do with killing of any civilians in Buguey (R 80-1, 85). Sgt Kido was at headquarters when Cpl Matsumoto came with the civilians but witness believes Sgt Kunitake was in his quarters (R 86). He never gave Sgt Kunitake any orders to execute civilians (R 87).

On redirect examination the accused said he was not with Lt Miwa 23 May 1945 (R 89). He did not wear a belt across his coat as prosecuting witness said he did (R 90, 94-5). His

headquarters were 2½ kilometers from the well where the civilians were found (R 90). The witnesses could not identify him at the stockade although one after talking to prosecutor thought the accused might be Capt Yoshida (R 91, 92-3). The witness had no control over Cpl Matsumoto (R 91).

On recross examination the witness stated Sgts Kido and Kunitake and Pvt Tagawa were his subordinates (R 91-2). The witness and Cpl Matsumoto were in same company but different platoons (R 92-3). The accused said he did not know the location of the well to which reference was made (R 95). The accused admitted he wears dark-rimmed glasses (R 96-7).

D. Rebuttal Evidence.

Pfc Oliver W. Jung, member of the Army of the United States, is the acting desk sergeant at the stockade where he was on duty 21 May 1946 (R 98). Prosecutor requested him to bring accused and three others by cell number, not by name (R 99). After the prisoners were lined up and the Filipino civilian was brought in the prosecutor was not sure the accused was in the line-up and said to witness there must be some mistake, the defendant was not there (R 99). While this was going on the civilian said he thought one was Yoshida and indicated him. He did not identify any of the others in the line-up (R 100). After the Filipino left the one indicated answered to roll call as being Yoshida (R 100). Prosecutor then noticed accused had left off his glasses (R 100-1). The next Filipino identified the accused with no help or indication from the prosecutor (R 101).

E. Commission Evidence.

The Commission wished information regarding the time and distance elements at the scene of the crime. The prosecution stated the evidence showed the civilians were brought around

midnight to the garrison where two witnesses said they were held about five minutes and then marched away to the well. The other witness said he was there about thirty minutes after the first two left. The defense said the accused admitted seeing the civilians about midnight as they passed his barracks (R 102). The distance from the garrison to the well was stipulated by counsel to be two-and-one-half kilometers (R 103-4).

III. OPINION:

A. As to Jurisdiction.

1. Pursuant to authority vested in him the Commanding General, United States Army Forces, Western Pacific, did, by paragraph 22, Special Orders No. 118, this Headquarters, 23 May 1946, properly establish the commission trying this matter.

2. The Commission had jurisdiction over the territory wherein it sat, over the person brought before it for trial and over the offenses with which he was charged. Letter, AG 000.5 (5 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, 5 December 1945, Subject: Regulations Governing the Trials of Accused War Criminals.

B. As to Procedure.

1. The members of the Commission were qualified to sit on this matter and they and the prosecution, interpreters and reporters were duly sworn.

2. The accused was informed of his rights in open court and was competently represented by counsel appointed by the convening authority and of his choice. The Charge and Specifications were furnished the accused in the Japanese language and all testimony at the trial was translated to the accused by his individual interpreter.

3. The trial procedure established by the Rules and Regulations hereinabove referred to was complied with in all respects.

4. The findings and sentence were returned with the requisite two-thirds vote in the affirmative by the members of the Commission constituting a quorum.

C. As to Evidence.

Though it is not clear in the evidence, apparently a company of Japanese soldiers was acting as a security guard in a coastal town as the main body of troops retreated to the hills. Security precautions were taken against signals to the approaching Americans, among such precautions being the evacuation of civilians from areas in which it was anticipated landing operations would take place. The town of Buguey was described as stretching along the coast for some distance. The accused in charge of a platoon was in one portion of the town while another platoon acted in a similar capacity some kilometers removed.

About midnight, 23 May 1946, eight or nine persons, all male, were captured in a house in Buguey and brought to the accused's garrison. Thus far the prosecution and defense evidence concurs. At this point the evidence given by the accused takes an entirely different tack from that of the prosecution witnesses.

The accused was his only witness. He testified he was not identified at the stockade by the Filipino witnesses except when they were helped by the prosecution. In direct contravention thereof is the testimony of the acting desk sergeant of the stockade that two of the Filipinos picked the accused out of the line-up although he had made identification difficult by leaving his eyeglasses in his quarters. The witnesses identified the

accused in the courtroom as the man who ordered their execution in Buguey.

The accused said the corporal in charge of the group of civilians which came to his quarters at the time specified told him they had been armed with bolos and were in a house with lights on. The Filipino witnesses stated they were all unarmed and asleep when they were captured. The accused's evidence in this instance is second-hand from an individual which the testimony fails to locate.

The accused stated the corporal in charge of the civilians was not a member of his platoon, he had no control over him and therefore could not order him to do or not to do anything. In contravention thereof the Japanese Sergeant Kido, in a statement written by himself, said he was a subordinate of the accused on duty in the garrison the night in question. He said the accused captured nine civilians and ordered Sgt Kunitake to execute them. Later, Sgt Kunitake reported he had executed seven of said civilians and thrown the bodies in a well but the other two had escaped, though one was shot.

The evidence given at the trial by the Filipino survivors, against whom this crime was perpetrated, agrees with the statement made by the Japanese sergeant, who on the stand admitted his written statement was true and obtained without force.

There is no evidence of any trial or even of questioning of the civilians prior to the order of execution being given. That they were in a restricted area is not denied but there is no testimony that being there subjected a person to being put to death. The taking of life of noncombatant civilians without some procedure permitting them to defend themselves at least verbally when there exists some doubt that the act with which they are accused automatically upon the performance thereof

carries the death penalty is a violation of the laws of war and is not to be condoned. The preponderance of the evidence establishes and the Commission found the accused violated the laws of war. There is no reason for disturbing the findings of the Commission.

IV. CLEMENCY:

No application for clemency has been presented by counsel for the accused and none is recommended.

V. RECOMMENDATION:

It is recommended the sentence herein be approved and the record of trial be forwarded to the Commander-in-Chief, United States Army Forces, Pacific, for action under paragraph 2, 1st Indorsement, AG 000.5 (27 Mar 46) LS, General Headquarters, United States Army Forces, Pacific, 27 March 1946, to basic letter, General Headquarters, Supreme Commander for the Allied Powers, AG 000.5 (27 Mar 46) LS, Subject: Trial of Takujira Yoshida.

The form of action designed to accomplish the foregoing recommendation is attached.

HOWARD C. GRAHAM
1st Lieut., TC
Asst Staff Judge Advocate

I CONCUR:

ASHTON M. HAYNES
Colonel, JAGD
Staff Judge Advocate

BEFORE THE
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
	)	ARRAIGNMENT AND
vs	)	PUBLIC TRIAL
	)	
TOKUJIRO YOSHIDA	)	

VOLUME I

Pages 1 to 88

MANILA, P. I.

DATE: 25 May 1946

COPY NO.: 2

CERTIFICATION

THIS CERTIFIES that this volume is a part of the proceedings of the Military Commission appointed by Paragraph 22, Special Orders No. 118, Headquarters, United States Army Forces Western Pacific, dated 23 May 1946, in the trial of the case of the United States of America v. Tokujiro Yoshida.

Dated 3 June 1946.

Archibald L. Parmelee

ARCHIBALD L. PARMELEE
Colonel, CAC
President of Commission

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
vs	)	ARRAIGNMENT AND
	)	PUBLIC TRIAL
TOKUJIRO YOSHIDA	)	

Court No. 1
High Commissioner's Residence
Manila, P. I.
25 May 1946

Met, pursuant to notice, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL ARCHIBALD L. PARMELEE, CAC, President
COLONEL BERNARD E. CONWAY, CAC, Law Member
LT. COLONEL STARLEY N. BOYKIN, JR., INF
LT. COLONEL RAFAEL A. MONSERRAT, JAGS (PA)
CAPTAIN GLENN W. HENDRICKS, FA

APPEARANCES:

FOR THE PROSECUTION:

2ND LIEUTENANT FRANK J. EBERHARTER, INF, Prosecutor

FOR THE DEFENSE:

1ST LIEUTENANT JOHN J. BERRY, TC, Chief Defense Counsel
1ST LIEUTENANT EVERETT W. THODE, INF, Assistant Defense Counsel

OFFICIAL INTERPRETERS FOR THE COMMISSION:

NARCISO ALBANO)	ILOCANO
ANGELO CELIS)	
PRISCILA AGUAS)	PANGASINAN
REBECCA MINER)	
T/SGT ROY KATO)	JAPANESE
T/3 GEORGE BABA)	
T/3 YOSHIYUKI MOTOYOSHI)	

OFFICIAL REPORTERS FOR THE COMMISSION:

ARNOLD COHEN
WILLIAM COHEN

I N D E X

WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS	EXAM. BY COMM.
Valeriano Tabuso	11	21			
Toribio Navarro	25	33	35		36
Jacinto Alonzo	40	50	55		55
Schimekichi Kido	58	61	62		
Noel Tsuneishi	66	72			
Tokujiro Yoshida	74	81			

EXHIBITS

	Offered	Received	Withdrawn
Prosecution's Exhibit No. 1	2	2	
2	2	2	
3	19	19	
4	20	20	
5	28	28	
6	29	29	
7	46	46	
8	46	46	
9	49	49	
10	69	69	
10-A	69	69	

GENERAL

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Paragraph 22, Special Orders No. 118	3, 4
Charge and Specifications	7, 8, 9

P R O C E E D I N G S

The Commission convened, pursuant to notice, at 0830 hours, 25 May 1946, in Court No. 1, High Commissioner's Residence, Manila, P. I.

COLONEL PARMELEE: The Commission will convene and hear any matters to be brought before it.

LIEUTENANT EBERHARTER: These proceedings involve Japanese for whom a personal interpreter has been furnished, and it has been agreed between the accused and counsel for the defense and prosecution that under these circumstances it will not be necessary to translate the proceedings in open court to the accused. However, the defense reserves the right at any time when necessary for the proper and complete understanding by the accused to request certain parts of the proceedings to be translated by the official Commission interpreter.

COLONEL PARMELEE: Is that satisfactory to the defense?

LIEUTENANT BERRY: Yes, sir.

COLONEL PARMELEE: The proceedings will be so conducted.

LIEUTENANT EBERHARTER: There has been referred to this Commission for trial the case of the United States of America against Tokujiro Yoshida. The accused is now present together with defense counsel appointed by the convening authority. The prosecution is ready to proceed.

COLONEL PARMELEE: You may proceed.

LIEUTENANT EBERHARTER: The prosecution offers as

Exhibit No. 1 Letter Order AG 000.5 (5 December 45) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 5 December 1945, with the subject being "Regulations Governing the Trials of Accused War Criminals."

COLONEL CONWAY: There being no objection, Prosecution's Exhibit No. 1 is admitted in evidence.

LIEUTENANT BERRY: No objection.

(Prosecution's Exhibit No. 1 was received in evidence.)

LIEUTENANT EBERHARTER: The prosecution offers as Exhibit No. 2 Letter Order, AG 000.5 (27 March 46) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 27 March 1946, with the subject being "Trial of Takujira Yoshida," with first indorsement from General Headquarters, United States Army Forces, Western Pacific, dated 27 March 1946.

COLONEL PARMELEE: The law member will rule.

COLONEL CONWAY: There being no objection, Prosecution's Exhibit No. 2 will be admitted in evidence.

LIEUTENANT BERRY: There is no objection.

(Prosecution's Exhibit No. 2 was received in evidence.)

LIEUTENANT EBERHARTER: The prosecution submits for incorporation into the record of these proceedings the following document: paragraph 22 of Special Orders No. 118, Headquarters, United States Army Forces Western Pacific, dated 23 May 1946.

COLONEL PARMELEE: There being no objection, the order is received in the record.

LIEUTENANT EBERHARTER: (Reading)

"RESTRICTED

"HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC

"APO 707
"23 May 1946

"Special Orders)
:
No. ..... 118) "EXTRACT

"22. The following officers are appointed members of a Military Commission to meet in the City of Manila, Philippine Islands, at the call of the President thereof, for the trial of Takujira Yoshida, accused war criminal. (Authority: 1st Ind. GHQ, AFPAC, APO 500, 27 March 1946, to letter GHQ, SCAP, file AG 000.5 (27 Mar 46) LS, dated 27 March 1946, subj: "Trial of Takujira Yoshida"):

Col. Archibald L. Parmelee CAC President
Col. Bernard E. Conway CAC Law Member
Lt. Col. Starley N. Boykin, Jr. INF
Lt. Col. Rafael A. Monserrat JAGS (PA)
Capt. Glenn W. Hendricks FA

"2d Lt. Frank J. Eberharter, INF, is designated Prosecutor. 1st Lt. John J. Berry, TC, is designated Chief Defense Counsel and 1st Lt. Everett W. Thode, INF, is designated Asst. Defense Counsel.

"The Commission will follow the provisions of Letter, GHQ, SCAP, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals," and is authorized to employ or appoint such interpreters, stenographic reporters and other assistants as it shall deem advisable.

"The record of trial including any judgment or sentence will be transmitted directly to this headquarters

for action by the appointing authority.

"BY COMMAND OF LIEUTENANT GENERAL STYER:

"OFFICIAL: /s/ Benito Morales
BENITO MORALES
Lt Col, AGD
Asst Adj Gen.

"J G CHRISTIANSEN
Major General, USA
Deputy Commander, and
Chief of Staff

"RESTRICTED"

LIEUTENANT EBERHARTER: At this time let the record show that the president of this Commission has previously delegated to the prosecutor the powers and duty of summoning witnesses and administering oaths during the course of these proceedings in accordance with paragraph 5c (3) of the Rules and Regulations Governing the Trials of Accused War Criminals.

The prosecution is ready to proceed with the arraignment of Tokujiro Yoshida.

COLONEL PARMELEE: The reporters will be sworn.

(Arnold Cohen and William Cohen were duly sworn as official court reporters.)

COLONEL PARMELEE: The interpreters will be sworn.

(Narciso Albano, Angelo Celis, Priscila Aguas, Rebecca Miner, T/Sgt. Roy Kato, T/3 George Baba, and T/3 Yoshiyuki Motoyoshi were duly sworn as official interpreters.)

COLONEL PARMELEE: The Commission will be sworn.

(Colonel Archibald L. Parmelee, Colonel Bernard E. Conway, Lieutenant Colonel Starley N. Boykin, Jr., Lieutenant Colonel Rafael A. Monserrat, and Captain Glenn W. Hendricks were duly sworn.)

COLONEL PARMELEE: The prosecution will be sworn.

(Second Lieutenant Frank J. Eberharter was duly sworn.)

LIEUTENANT EBERHARTER: A certified copy of the Charge and Specifications against Tokujiro YOSHIDA together with a true and complete translation thereof, was served upon the accused by Lieutenant Eberharter on 4 April 1946 and 24 May 1946, at Manila, P. I.

COLONEL PARMELEE: The rights of the accused as set forth in paragraph 5b, sub-section 3, of Letter dated 5 December 1945, General Headquarters, Supreme Commander for the Allied Powers, entitled "Regulations Governing the Trials of Accused War Criminals," heretofore introduced into the record will be read and explained.

LIEUTENANT EBERHARTER: (Reading)

"b. RIGHTS OF THE ACCUSED. The accused shall be entitled:

"(1) To have in advance of trial a copy of the charges and specifications clearly worded so as to apprise the accused of each offense charged.

"(2) To be represented, prior to and during trial by counsel appointed by the convening authority or counsel of his own choice, or to conduct his own defense.

"(3) To testify in his own behalf and have his counsel present relevant evidence at the trial in support of his defense, and cross-examine each adverse witness who personally appears before the Commission.

"(4) To have the substance of the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them."

(The interpreter translated to the accused.)

COLONEL PARMELEE: The provisions of sub-section (1) have been complied with, it appearing that a certified copy of the Charge and Specifications, together with a true and complete translation thereof, were served upon the accused on 4 April 1946 and 24 May 1946.

Whom does the accused desire to introduce as defense counsel?

LIEUTENANT BERRY: The regularly appointed defense counsel and assistant defense counsel.

LIEUTENANT EBERHARTER: At this time the prosecution moves that the Specifications be amended in so far as the date the accused violated the laws of war, substituting May 1945 in place of March 1945. The accused and counsel for the accused have been previously notified of this change of dates and the prosecution understands there will be no objection to this motion.

COLONEL PARMELEE: Is this agreeable to the defense counsel and the accused?

LIEUTENANT BERRY: Yes, sir.

COLONEL PARMELEE: The motion of the prosecution is granted and the Specifications will be corrected to show the date of commission of the violations of the laws of war by the accused to be May 1945.

The Charge and Specifications as amended will be read to the accused.

LIEUTENANT EBERHARTER: (Reading)

"GENERAL HEADQUARTERS
"SUPREME COMMANDER FOR THE ALLIED POWERS

"Before the MILITARY COMMISSION convened by the COMMANDING GENERAL United States Army Forces, Western Pacific	))))))	"UNITED STATES OF AMERICA vs Takujira YOSHIDA

"CHARGE

"That Takujira YOSHIDA, an officer in the Imperial Japanese Armed Forces, at the places and on the dates hereinafter specified, during a time of war between the United States of America, its allies and dependencies and Japan, did wrongfully fail to discharge his military duty and did otherwise commit high crimes in that he ordered, directed, permitted and participated in the brutal and wrongful wounding and killing without cause or trial, of unarmed Filipino civilians and thereby violated the laws of war.

"SPECIFICATIONS

"1. In that Takujira YOSHIDA did, during the latter part of March 1945 at Buguey, Cagayan Province, Luzon, Philippine Islands, unlawfully order, direct and permit members of the Imperial Japanese Armed Forces under his command and control unlawfully to kill Jesus PAGADOR, Wincislao (Mincing) TABILIS, Sidro UNICO and three other unarmed civilians, and did himself participate in the crime, in violation of the laws of war.

"2. In that Takujira YOSHIDA did, during the latter part of March 1945 at Buguey, Cagayan Province, Luzon, Philippine Islands, unlawfully order, direct and permit members of the

Imperial Japanese Armed Forces under his command and control unlawfully to wound and attempt to kill Jacinto ALONZO, Toribio NAVARRO and Valeriano TABUZO, unarmed civilians, and did himself participate in the crime, in violation of the laws of war.

"Dated: 25 March 1946.

"/S/ ALVA C. CARPENTER
/T/ ALVA C. CARPENTER
Colonel, JAGD
United States Army

"AFFIDAVIT

"Before me personally appeared the above-named accuser this 25th day of March 1946, and made oath that he is a person subject to military law and that he personally signed the foregoing charge, and further that he has investigated the matters set forth in the charge, and that it is true in fact, to the best of his knowledge and belief.

"/S/ MANNING D. WEBSTER
CAPTAIN JAGD. AUS"

"GENERAL HEADQUARTERS
UNITED STATES ARMY FORCES, WESTERN PACIFIC
APO 707

"23 May 1946

"Referred for trial to 2d Lt. Frank J. Eberharter, INF, Prosecutor of the Military Commission appointed by paragraph 22, Special Orders No. 118, this Headquarters, 23 May 1946.

"By command of Lieutenant General STYER:

"/s/ J. J. Gerhardt
/t/ J. J. GERHARDT
Colonel AGD
Adjutant General

"I hereby certify that I have served a copy hereof, together with a true and complete translation thereof into Japanese, on the above-named accused this 4th day of April 1946 and 24th day of May 1946.

"/s/ Frank J. Eberharter
2d Lt., INF., Prosecutor"

LIEUTENANT EBERHARTER: The prosecution now introduces for incorporation into the record the Charge and Specifications which have been read to the accused.

COLONEL PARMELEE: There being no objection, the Charge and Specifications are received into the record.

LIEUTENANT BERRY: There is no objection.

COLONEL PARMELEE: In certain papers I have before me, the spelling of the first name of the accused is T-o-k-u-j-i-r-o; in the Charge and Specifications it is T-a-k-u-j-i-r-a. Which is correct?

LIEUTENANT EBERHARTER: May it please the Commission, it has been stipulated between the prosecutor, the defense counsel and the accused that the correct name, rank and internment serial number of the accused is Tokujiro Yoshida, Captain, 51J-17387.

The commission will note that the spelling of the first name has been corrected from that appearing in the Charge and Specifications.

COLONEL PARMELEE: When the Charge and Specifications were read, the month of March was stated. It's understood by the accused that that should be "May"; is that correct?

LIEUTENANT BERRY: That's right.

LIEUTENANT EBERHARTER: The spelling of the name is cleared up to the satisfaction of the Commission, sir?

COLONEL PARMELEE: That's "T-o"?

LIEUTENANT EBERHARTER: "T-o," sir.

COLONEL PARMELEE: Does the defense join in that stipulation?

LIEUTENANT BERRY: Yes, sir.

COLONEL PARMELEE:The law member will rule.

COLONEL CONWAY: The corrections will be entered into the record as noted.

COLONEL PARMELEE: Has the defense any motion to make at this time?

LIEUTENANT BERRY: The defense has no motion.

COLONEL PARMELEE: Tokujiro Yoshida, at this time the Commission will hear your plea to the Charge and Specifications which have been read to you. You may plead either guilty or not guilty.

(The interpreter translated to the accused.)

THE ACCUSED: I plead not guilty.

COLONEL PARMELEE: Has the prosecution any recommendation to make as to the time for trial?

LIEUTENANT EBERHARTER: The prosecution is now ready to proceed with the presentation of its case, sir.

COLONEL PARMELEE: Is the defense agreeable to proceeding at this time?

LIEUTENANT BERRY: Yes, sir.

COLONEL PARMELEE: The Commission will hear the opening statement of the prosecution.

LIEUTENANT EBERHARTER: May it please the Commission, it is not the intention of the prosecutor to make any long-winded opening statement. This is a relatively simple case. There are but two specifications growing out of but one incident that occurred in the town of Buguey, Northern Luzon, during the latter part of May 1945, when either the accused or members under his command and control, at his direction, killed and attempted to kill unarmed Filipino civilians.

For this violation of the Laws of War, which the prosecution will prove, it will ask for the death penalty in this case.

The prosecution calls as its first witness Valeriano Tabuzo.

VALERIANO TABUZO

a witness for the prosecution, being duly sworn, testified as follows:

LIEUTENANT EBERHARTER: If the Commission please, this man speaks English quite hesitantly. I feel, however, it is better if we can have questions and answers in English; so we will start out in English and, if necessary, we will call upon our Ilocano interpreters to carry on from there, if that is agreeable with the Commission.

COLONEL PARMELEE: That is agreeable with the Commission. Under which specification will this witness testify?

LIEUTENANT EBERHARTER: All three of the civilian witnesses that I will call will testify with respect to both specifications, sir.

DIRECT EXAMINATION

BY LIEUTENANT EBERHARTER:

Q Now, this is a large courtroom and we have got a lot of

windows, and I want you to speak very loudly so that everybody can hear you, especially so that the Commission can hear your answers.

A Yes, sir.

Q Will you state your name to the Commission, please?

A My name is Valeriano Tabuzo.

Q How old are you?

A Nineteen years old.

Q Where is your home?

A It was in Buguey, Cagayan; Centro Buguey.

Q Were you living there during the Japanese occupation of Buguey?

A Yes, sir.

Q Were you ever taken captive or made a prisoner by the Japanese?

A I have not been captured; but May 23rd I was captured.

Q Of what year?

A 1945.

Q What were you doing at the time you were captured?

A We were sleeping, sir.

Q You were sleeping?

A Yes, sir.

Q Where were you sleeping?

A At the house in Carocwan.

Q Is that a small barrio of Buguey?

A Yes, sir.

Q Were you alone?

A No, sir, we are eight in all.

Q Eight in all?

A Yes, sir.

Q Will you tell the Commission the names of your companions?

A My companions are Zoilo Tabuzo, Sidro Unico, Wincislao Tabillis, Juan Tabin, Jesus Pagador, Toribio Navarro, and Jacinto Alonzo; those are the names.

COLONEL PARMELEE: At this point I would like to ask defense counsel if he can hear this testimony, and can the interpreter of the accused, and the accused, hear it?

LIEUTENANT BERRY: Yes, sir.

Q How many Japanese soldiers were there?

A There were about twelve Japanese.

Q Where did they take you?

A They take me in the barrio of Carocwan, and afterwards we went to Centro Buguey.

Q What time of the day or evening or night was that?

A It was the day of May 23, 1945.

Q At what time?

A It was about twelve o'clock at midnight.

Q About midnight. What happened when you arrived in Centro Buguey at the garrison?

A We stand on the street about twenty minutes. We went in the Municipal Building and we stopped there for about five minutes, and when we stopped there the Japanese -- every two Japanese got one civilian, and they are going to -- they get us in some place near the Municipal Building, and they get a rope from their pockets, and they are trying to tie our hands, and when they are about to tie my hands, I ran away.

Q All right. You mentioned that you were held at the headquarters of the Japanese twenty minutes.

A Yes, sir.

Q What occurred during that twenty minutes?

A They are talking to each other. The Japanese are talking to each other, but I cannot understand their dialect.

Q You don't understand Japanese?

A Yes, I don't.

Q Were you questioned?

A No, sir.

Q Were you given any kind of a trial or a court-martial?

A No, sir.

Q At the garrison were they all soldiers or were there any officers present?

A There are, sir; there are Captain Miwa and Lieutenant Yoshida.

Q I want you to look around this courtroom and see if you can recognize either one of those Japanese officers you have just mentioned.

A Yes, sir.

Q Who?

A Captain Yoshida.

Q Was he a captain at that time?

A Lieutenant Yoshida.

Q He was a lieutenant at that time. Will you point him out to me, please?

A Here, sir?

Q Did you see him in this courtroom?

A I can see him, sir.

Q Where is he?

A He is there, sir (pointing).

Q Sitting at the end of the table?

A Yes, sir.

LIEUTENANT EBERHARTER: May the record show that the witness properly identified Lieutenant, now Captain, Tokujiro Yoshida?

COLONEL PARMELEE: The record will so indicate.

Q Then you couldn't understand this Japanese, but you were taken away from the garrison and taken out to the Municipal Building, you said?

A I do not know the soldiers, sir, but only the officer.

Q All right.

A He is Lieutenant Yoshida.

Q What happened when you arrived out by the Municipal Building?

A We stopped there, sir, about five minutes, and the soldiers went around to see some place where they were going to put us.

Q Yes.

A And when they returned to our place, every two Japanese get one civilian, and went to the place where they went to see.

COLONEL PARMELEE: The defense is having difficulty hearing the witness. I think we had better put the witness over in front of the Commission.

LIEUTENANT BERRY: Sir, it is all right, so long as he does not swing around in his chair and face out.

COLONEL PARMELEE: Will the reporter read back the last question and answer?

(The last question and answer were read by the reporter.)

COLONEL PARMELEE: The prosecution may proceed.

BY LIEUTENANT EBERHARTER:

Q You mentioned you were not questioned, interrogated, when you were at the garrison. Were you ever questioned or

interrogated at the Municipal Building?

A No, sir.

Q Were all your companions with you at that time?

A Yes, sir.

Q Were any of them questioned, interrogated, or given a trial?

A No, sir.

Q What happened at the Municipal Building?

A They get their rope inside their pockets, and when they are going to catch my hand, I ran away from them.

Q When they are going to tie your hands, you mean?

A Yes, sir.

Q You ran away?

A Yes, sir.

Q Had anything occurred before you ran away?

A I beg your pardon?

Q Why did you run away?

A Because I have seen my companion Toribio Navarro bayoneted.

Q How far away were you from Toribio Navarro when he was bayoneted?

A About twenty meters, sir.

Q About twenty meters. Could you see who bayoneted him?

A I cannot recognize him..

Q Was that a soldier or an officer?

A It is a soldier.

Q A soldier. Did you see any officers present at that time?

interrogated at the Municipal Building?

A No, sir.

Q Were all your companions with you at that time?

A Yes, sir.

Q Were any of them questioned, interrogated, or given a trial?

A No, sir.

Q What happened at the Municipal Building?

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A Yes, sir.

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A Yes, sir.

Q Had anything occurred before you ran away?

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Q Why did you run away?

A Because I have seen my companion Toribio Navarro bayoneted.

Q How far away were you from Toribio Navarro when he was bayoneted?

A About twenty meters, sir.

Q About twenty meters. Could you see who bayoneted him?

A I cannot recognize him..

Q Was that a soldier or an officer?

A It is a soldier.

Q A soldier. Did you see any officers present at that time?

A I didn't see, sir, because we stopped in the road and the officer stopped there too.

Q Stopped on the road?

A Yes, sir.

Q And the officer stopped there too?

A Yes, sir.

Q What officer is that?

A Lieutenant Yoshida, sir.

Q How far away were you from the road when you saw Toribio Navarro bayoneted?

A It is about five meters, sir.

Q How far would Lieutenant Yoshida, standing on the road, be from where Toribio Navarro was bayoneted?

A Maybe about fifteen meters, sir.

Q Did you hear Lieutenant Yoshida say anything?

A I heard, sir, he command his soldiers.

Q Do you know what he said?

A No, sir, because he speak very loudly and I thought he is commanding his soldiers.

COLONEL PARMELEE: Speak up a little louder, Valeriano; speak up loud.

Q Did he speak in Japanese, Lieutenant Yoshida? Did he speak in Japanese?

A Yes, sir.

Q After Toribio Navarro was bayoneted, did he fall down?

A They do like this, sir (demonstrating), and he ran away.

Q He ran away?

A Yes, sir.

Q Where did he run to?

A He ran to the seashore.

Q Ran to the seashore?

A Yes, sir.

Q And then what occurred?

A Beg your pardon sir?

Q Is that the time when the Japanese who was guarding you tried to tie your hands?

A When Toribio Navarro, sir -- they began to get their rope in their pockets, and when they are trying to catch my hand I ran away.

Q You ran away. Did you escape from the Japanese?

A Yes, sir, but they hit me.

Q They hit you?

A Yes, sir.

Q How did they hit you?

A By rifle, sir.

Q Where did they hit you?

A On my left hand, sir.

Q I ask you what that is (photograph handed to witness).

A It's my picture, sir.

Q Your picture?

A Yes, sir.

Q Showing what?

A Showing my wound.

Q Do you remember when that was taken?

A It was in November 18, 1945.

Q Do you remember who took that photograph?

A I cannot remember; I cannot remember who took my picture, sir.

LIEUTENANT EBERHARTER: If the Commission please, I offer the photograph of the witness showing his wound as Exhibit No. 3.

COLONEL PARMELEE: The law member will rule.

(Photograph handed to defense counsel.)

COLONEL CONWAY: Any objection on the part of the defense?

LIEUTENANT BERRY: No objection.

COLONEL CONWAY: Prosecution Exhibit No. 3 will be accepted in evidence.

(Prosecution Exhibit No. 3 was received in evidence.)

Q I ask you what that is (showing photograph to witness).

A My wound, sir.

Q And when was that photograph taken?

A It was taken at the same time, sir.

Q At the same time?

A Yes, sir.

Q Do you remember who took that photograph?

A I cannot remember, sir.

LIEUTENANT EBERHARTER: Prosecution offers Exhibit No. 4, close-up of witness showing his wound.

COLONEL CONWAY: Any objections on the part of the defense?

LIEUTENANT BERRY: No objections.

COLONEL CONWAY: Prosecutions Exhibit No. 4 will be received in evidence.

(Prosecutions Exhibit No. 4 was received in evidence.)

Q How is your arm at the present time?

A I beg your pardon, sir?

Q Do you have full use of your arm?

A No, sir, I cannot straighten.

Q You can't straighten it?

A Yes, sir.

Q Did you have medical treatment?

A Only a doctor, sir, but he did not cure it very well.

Q Do you know whether or not the bullet shattered the bone in your arm?

A The bone was broken, sir, but not entirely.

Q Do you know what happened to your other companions that

were taken near the Municipal Building with you that night?

A I don't know, sir, because they were left in the garrison when we three were taken.

Q You mean just you and Toribio Navarro were taken out?

A Juan Tabin too, sir.

Q And the rest of them were left back at the garrison?

A Yes, sir.

Q Have you ever seen any of those men that were left back at the garrison alive?

A I have seen, sir, it was Jacinto Alonzo.

Q Did you ever see any of the other companions with you at that time alive?

A I didn't see any more, sir.

Q Did you ever visit the well next to the Municipal Building in Centro Buguey?

A I didn't go, sir, because I was weak before; my only sisters and brothers went there.

Q You never visited after that night?

A No, sir.

LIEUTENANT EBERHARTER: You may inquire.

CROSS-EXAMINATION

BY LIEUTENANT BERRY:

Q Valeriano, at the time that the Japanese soldiers came to your house to get you --

A Yes, sir.

Q -- were all your companions living in the one house with you at the same time?

A Yes, sir, we were eight in all.

Q Why were you all living in one house if you are not members

of the same family?

A No, we went to Buguey to get some palay, sir, and we were caught there.

Q Were you supposed to be in Buguey at that time?

A I beg your pardon sir ?

Q Where did you come from to go to Buguey? Where had you been staying?

A I was staying at the barrio of Tapel.

Q Had the Japanese commanders told all the people to move away from Buguey?

A Yes, sir.

Q Why did the Japanese commanders tell the people to go away?

A I didn't know, sir.

Q Did you see any American airplanes at that time?

A I have not seen yet, sir.

Q Have you ever seen a bombing?

A I beg your pardon, sir?

Q Have you ever seen any airplanes dropping bombs on the ground? Do you know what I mean?

A Yes, sir.

Q Have you ever seen that up there?

A Yes, sir.

Q Was there any at that time?

A It was night, sir.

Q Did the Japanese tell the people what would happen if they came back into Buguey after they told them to leave?

A I beg your pardon, sir?

Q Did the Japanese commanders tell the people, when they said to go away, what they would do to them if they came back?

A I don't know.

Q Did you know it was wrong to come back to Buguey?

A Beg pardon, sir?

LIEUTENANT EBERHARTER: (To interpreter) Do you want to ask him that question?

(Interpreter translated to the witness.)

A No, sir.

Q Were any of your companions with the guerrillas?

A (Through interpreter) Yes, sir, there are two.

Q Did any of them, if you know, have any firearms?

A None, sir.

Q When . . the Japanese brought you down to the Centro Buguey to the garrison, were you questioned there?

A No, sir.

Q Did you see your companions questioned there?

A No, sir.

Q When was the first time that you ever saw Centa in Yoshida?

A I have seen him in the barrio Paddaya, sir.

Q In Paddaya?

A Yes, sir.

Q You knew him in Paddaya?

A Yes, sir.

Q When did you first see him in Buguey?

A I cannot remember that month now, sir.

Q Was he in the garrison when you were brought down here that night?

A Yes, sir.

Q When the soldiers then took you up to the Municipal Building with your companions was the captain with you then?

A He was there, sir.

Q Did he go marching along with you?

A Yes, sir.

Q When they started to tie you up --

A Yes, sir.

Q -- you say you ran away?

A Yes, sir.

Q Was it after that that you saw your companion bayoneted?

A No, sir.

Q Before that?

A (Through interpreter) Yes, sir, it was before.

LIEUTENANT EBERHARTER: Which was before? You mean he saw the bayoneting?

INTERPRETER CELIS: The bayoneting before he ran away.

Q What was the name of your companion who was bayoneted, sir?

A Toribio Navarro, sir.

Q Was he bayoneted because he tried to get away?

A Yes, sir.

Q Which two companions were with the guerrillas?

A There were Zoilo Tabuzo and Wincislao Tebilis.

Q Where did you go after you ran away?

A We went to the nipa palms.

Q When did you come back to Buguey? Did you return to Buguey?

A No, sir, we went to the place where we evacuate.

Q Why did you come back from the place where you were evacuated to Buguey that first time?

A Because our families are there, sir; father.

Q Other than the one person you saw bayoneted before you got to the Municipal Building, you did not see any one else bayoneted

A No, sir.

LIEUTENANT BERRY: That's all.

COLONEL PARMELEE: The Commission will take a short recess.

(Short recess.)

COLONEL PARMELEE: The Commission is in session.

LIEUTENANT EBERHARTER: All members of the Commission are present, counsel for the defense, the accused, and the prosecutor are present.

COLONEL PARMELEE: Redirect examination?

LIEUTENANT EBERHARTER: No questions, sir.

COLONEL PARMELEE: Questions by the Commission? There appear to be none. Witness is excused.

(Witness excused.)

LIEUTENANT EBERHARTER: Prosecution calls as its next witness Toribio Navarro, who will testify in connection with Specifications 1 and 2.

TORIBIO NAVARRO

a witness for the prosecution, was duly sworn and testified as follows through Interpreter Rebecca Minor:

DIRECT EXAMINATION

BY LIEUTENANT EBERHARTER:

Q Will you state your name to the Commission, please?

A Toribio Navarro.

Q How old are you?

A Twenty-six years old.

Q Where is your home?

A I was in Buguey before but I was transferred to Nanerman, Santo Domingo, Ilocos Sur.

Q Were you in Buguey at any time during May, 1945?

A Yes, sir, I was there.

Q Were you taken prisoner or made captive by the Japanese at any time?

A No, sir.

Q Who were your companions in Buguey?

A Valeriano Tabuzo, Jesus Pagador, Juan Tabin, Wincislao Tabilis, Jacinto Alonzo, Sidro Unico and myself.

Q What date was that, when you were in Buguey with those companions?

A It was on the day of Wednesday, May 23, 1945.

Q Where were you in Buguey?

A I was in Centro.

Q Were you in a house?

A Yes, sir.

Q Did any Japanese ever come to that house?

A Yes, sir.

Q How many Japanese were there?

A There were twelve of them.

Q Were they all enlisted men soldiers, or were there any officers present?

A Yes, sir, there were two officers.

Q What were you doing when the Japanese arrived at the house in which you and your companions were staying?

A We were sleeping.

Q What time of the night was that?

A It was around twelve o'clock, midnight.

Q Did the Japanese take you out of your house?

A Yes, sir they took me out.

Q Where did they take you and your companions?

A They brought us to their garrison.

Q Did you go inside the garrison?

A No, sir.

Q What happened at the garrison?

A We were filed like soldiers; we were put in line like soldiers.

Q Did you overhear any conversation between the soldiers, the Japanese soldiers, and the officers?

A They talked to each other, but I didn't understand any word.

Q Did they talk in Japanese?

A Yes, sir, they talked in Japanese.

Q How long were you held at the garrison?

A We were held around twenty minutes.

Q Were you questioned or interrogated by the Japanese when you were at the garrison?

A No, sir, no questions was asked.

Q Were all your companions with you at the garrison at that time?

A We were all together.

Q Were any of your companions questioned or interrogated?

A No , sir.

Q Were you or any of your companions given a trial or a court-martial at any time by the Japanese?

A No, sir, nobody.

Q Where did you go from the garrison?

A From the garrison we went near the Municipal Building of Buguey.

Q What happened when you arrived near the Municipal Building at Buguey?

A We were tied with our hands at our backs.

Q And then what happened?

A One soldier was pointing the bayonet at me while the other one was just holding my arm.

Q Were you bayoneted by that Japanese?

A Yes, sir I was bayoneted.

Q Where were you bayoneted?

A It was from my back wont through my stomach.

Q I ask you what is this? (Showing picture to witness)

A I am the one, sir.

Q That's a picture of you?

A Yes, sir.

Q Do you recall when that was taken?

A Yes, sir.

Q When?

A November 18, 1945.

Q Do you recall who took that photograph?

A I couldn't quite remember.

LIEUTENANT EBERHARTER: The prosecution offers the photograph just identified by the witness as Exhibit No. 5.

COLONEL CONWAY: Objection by the defense counsel?

LIEUTENANT BERRY: (Nods negatively.)

COLONEL CONWAY: Prosecution Exhibit No. 5 will be received in evidence.

(Prosecution's Exhibit No. 5 was received in evidence.)

Q I ask you to state who this is, if you know (showing photograph to witness).

A I am the one, sir.

Q When was that photograph taken?

A November 18, 1945.

Q Do you recall who took that photograph?

A I forgot it.

Q Does that accurately represent your wound on the left side of your body as of that time?

A Yes, sir.

Q Is that where the bayonet went in or where it came out?

A The bayonet went from my back out from my stomach.

LIEUTENANT EBERHARTER: Prosecution offers as Exhibit No. 6 photograph just identified by the witness.

COLONEL CONWAY: Objections by the defense?

LIEUTENANT BERRY: No objections.

COLONEL CONWAY: Prosecution's Exhibit No. 6 will be received in evidence.

(Prosecution's Exhibit No. 6 was received in evidence.)

Q After you were bayoneted by this Japanese, what occurred?

A When I ran away from the Japanese around five meters, they shoot at me again.

Q Were you hit?

A I was not hit, but my hat was hit and it was flown away.

Q Did you recognize or know the Japanese that bayoneted you?

A I couldn't remember him, sir.

Q Was that a soldier or an officer?

A It might be a soldier.

Q Did you see any officer present when you were bayoneted?

A There was.

Q How far away was this officer?

A Around ten meters away.

Q Did you recognize that officer?

A I could recognize him.

Q Do you know his name?

A I couldn't recollect his name, but according to the people his name was Yoshida.

Q Your companions told you that that officer was Yoshida, is that correct?

A Yes, sir.

Q I want you to look around the courtroom and see if you recognize the officer that you say was present at that time and that your companions told you was Yoshida.

A Yes, sir, he is present.

Q Would you point him out to the Commission, please?

(Witness points to accused.)

Q Would you mind stepping over to the table and pointing him out so that we are sure you have the right man?

(Witness approaches accused and points at accused.)

A Him, sir (pointing).

LIEUTENANT EBERHARTER: Let the record show that the witness properly identified Captain Tokujiro Yoshida.

COLONEL PARMELEE: The record will so indicate.

Q Where did you go after you were fired at as you were running along the beach?

A I ran to the seashore.

Q Did you ever see any of your companions?

A No, sir, nobody.

Q Do you know what happened to your companions?

A Maybe they were dead because I heard shooting, gunshots.

Q When did you next see any one of your companions?

A At the next morning I saw Valeriano Tabuzo.

Q Where was that?

A That was in the morning of Thursday.

Q What was his condition at that time?

A He told me that he was fired at and some of his bones were broken.

Q Did you see where he had been wounded at any place?

A I have seen it, sir.

Q Tell me about it.

A On his left arm.

Q Did you ever receive any doctor's care for your wound?

A Yes, sir.

Q Have you completely recovered from your wound at this time?

A Yes, sir, because I can't feel any more pain.

Q Where did you go to receive your medical treatment?

A In Tapel.

Q When did you next return to Buguey?

A That was in September.

Q Of what year?

A 1945.

Q Did you have an occasion to visit a well by the Municipal Building at that time?

A Yes, sir.

Q What did you find in the well, if anything?

A I saw the hat, the bones, the clothes of my companions, and the ropes that they were tied, their hands.

Q How did you know that those belonged to your companions?

A I know because of the clothes and the hats they wore. I cannot forget them.

Q They were the same clothes that they wore the night that you were bayoneted, is that correct?

A Yes, sir.

Q Are you a guerrilla?

A No, sir.

Q Were you ever a member of the guerilla party?

A No, sir.

Q Did you have any firearms with you or about the house the night you were taken by the Japanese?

A No, sir.

Q Did any of your companions have any firearms?

A No, sir, none, sir.

Q Did you see any of your companions mistreated by the Japanese in any way?

A I have not seen anybody, sir.

Q These companions you mentioned, that were taken prisoner with you on the 23d of May, 1945 -- have you ever seen them alive again?

A Yes, sir, I have seen them.

Q Who have you seen?

A Jacinto Alonzo.

Q And, as you previously stated, Valeriano Tabuzo, is that correct?

A Yes, sir.

Q But you have never seen the rest of your companions, other than finding clothes in the well along with skeletons by the Municipal Building; is that correct?

A I have not seen anybody.

LIEUTENANT EBERHARTER: You may inquire.

CROSS EXAMINATION

BY LIEUTENANT BERRY:

Q Do you come from Buguey; is that your home?

A My home was there formerly, but it was burned. So I transferred to Nanerman, Santo Domingo, Ilocos Sur.

Q Where were you in April, 1945.

A I was in Tapel.

Q Had you been evacuated there by order of the Japanese?

A The Japanese told us to evacuate in that town.

Q Did they tell you why they wanted you to evacuate?

A Yes, sir, they told us to evacuate to that place.

Q Why?

A Because that is within the military zone.

Q Why did you come back to Buguey on the 23d of May?

A I went back to Buguey because I was going to get some food for my family.

Q Were any of your companions guerrillas?

A Yes, sir, there were two.

Q Which two?

A Wincislao Tabilis and Zoilo Tabuzo.

Q Did they belong to any particular unit of guerrillas?

A I don't know what unit they are with.

Q Did you ever hear of the Bolo Unit?

A Yes, sir.

Q Could they have been members of that unit?

A Yes, sir, they are members.

Q Why were the two of your companions who were guerrillas in that house that night?

A They were there because we were all together.

Q Do you know why the Japanese soldiers should come to that house on that night and arrest you and your companions?

A I don't know, sir.

Q Do you think it possible that they came to arrest your companions who were guerrillas?

A No, sir, because we were sleeping.

Q When was the first time you ever saw Captain Yoshida?

A I oftentimes saw him before the Americans arrived.

Q Approximately what month of 1945 was the first time you ever saw him?

A I couldn't quite remember what month was the first time I saw him.

Q Are you certain that he was the officer present that night?

A Yes, sir.

Q How long had you been at that house in Buguey before you were arrested?

A Half of a night.

Q How long had you been in and about Buguey before you were arrested?

A We went there in the night of Sunday and we were

arrested on the morning of Wednesday.

Q What were you doing in Buguey between Sunday and Wednesday, other than looking for food?

A We were not doing anything.

LIEUTENANT BERRY: That's all.

COLONEL PARMELEE: Redirect?

REDIRECT EXAMINATION

BY LIEUTENANT EBERHARTER:

Q Are you married?

A Yes, sir.

Q Do you have any children?

A Yes, sir.

Q How many children do you have?

A Three of them.

Q Did you have enough food for yourself, your wife, and your three children in Tapel?

A It could hardly meet both ends.

Q And the reason you went to Buguey was what?

A We went there to take food for us.

Q You mentioned that two of your companions were members of the guerrilla party.

A Yes, sir.

Q Did they harass or hinder any of the Japanese movements or do anything against the Japanese that were present in Buguey when you were with them?

A No, sir.

Q Had they come from Tapel with you?

A They were my companions and we went to take food

from Buguey.

Q Were their families likewise in Tapel?

A Yes, sir.

Q Were you or any of your companions, including the two companions you mentioned as guerrillas, ever questioned or given a trial by the Japanese?

A Nobody.

LIEUTENANT EBERHARTER: That's all, sir.

COLONEL PARMELEE: Recross?

LIEUTENANT BERRY: (Nods negatively.)

COLONEL PARMELEE: Questions by the Commission?

EXAMINATION BY THE COMMISSION

BY COLONEL BOYKIN:

Q How many of your companions were with you near the Municipal Building after you had been taken prisoner on the night of May 23d?

A We were eight in all.

Q You were all together near the Municipal Building where you were wounded, is that correct?

A Five were dead, were killed; and three survive.

Q Were the five killed at that time?

A I know they were killed because I have seen them in the well, their clothes and bones.

Q You didn't know that they were killed at that time, is that correct?

A I don't know, sir, because we were just three of us are together.

Q Where had you last seen the five?

A That was the month of September, 1945.

Q When was the last time you saw them -- and where was the last time you saw them on the night of May 23?

A The last time I saw Valeriano was when I was bayoneted, in the morning, the day after I was bayoneted.

Q I mean before you were bayoneted, the five that you say were killed -- when was the last time you saw them?

A I have not seen them again, before I was bayoneted.

BY LIEUTENANT EBERHARTER:

Q When you were taken away from the Japanese garrison in Centro Buguey, and led out to be bayoneted, did all your companions go with you?

A No, sir.

Q Who accompanied you when you left the garrison?

A The Japanese soldiers and the two officers.

Q Were there any of your companions along on that trip?

A There was.

Q How many?

A Valeriano Tabuzo, Juan Tabin -- we were three other Filipinos, myself, Juan Tabin, and Valeriano Tabuzo.

Q Are there just three Filipinos in all -- Juan Tabin, Valeriano Tabuzo, and yourself?

LIEUTENANT EBERHARTER: Ask him that and see if that is correct.

(The interpreter translated to the witness.)

A Yes, sir, that's true.

Q Isn't it true that some of your companions were left behind in the garrison when you were taken out to be

bayoneted?

A They were left outside the garrison on the street.

Q And that was the last time you saw those men alive?

A That was my last time to see them alive.

LIEUTENANT EBERHARTER: Does that clear it up, sir?

COLONEL BOYKIN: I think so, yes.

LIEUTENANT EBERHARTER: No further questions, sir.

EXAMINATION BY THE COMMISSION (Cont'd)

BY COLONEL PARMELEE:

Q You testified that you saw certain bodies of your companions in this well. What are the names of those companions that you identified as being dead in the well?

A Yes, sir, I know their names.

Q What are their names?

A Juan Tabin, Zoilo Tabuzo, Wincislao Tabilis, Sidro Unico, Jesus Pagador.

Q Have you ever seen Wincislao Tabilis, Sidro Unico, or Jesus Pagador again?

A I have not seen them any more, sir.

Q Have you in your community ever talked with anyone or heard of anyone who has seen them alive since that time?

A No more, sir. I have not heard anything or seen anything.

COLONEL PARMELEE: There are no further questions by the Commission. Does the prosecution have any questions?

LIEUTENANT EBERHARTER: No further questions, sir.

COLONEL PARMELEE: Does defense have any questions?

LIEUTENANT BERRY: No, sir.

COLONEL PARMELEE: The witness is excused.

(Witness excused)

COLONEL PARMELEE: The Commission will take a short recess.

(Short recess.)

COLONEL PARMELEE: The Commission is in session.

LIEUTENANT EBERHARTER: All members of the Commission are present, the accused, counsel for the defense, and counsel for the prosecution, are all present.

Prosecution calls as its next witness, Jacinto Alonzo.

JACINTO ALONZO

a witness for the prosecution, being duly sworn, testified as follows through Interpreter Angelo Celis:

DIRECT EXAMINATION

BY LIEUTENANT EBERHARTER:

Q Would you state your name, please.

A Jacinto Alonzo.

Q How old are you?

A I am running to thirty-four years old.

Q Where is your home?

A In Buguey, Centro Buguey.

Q Were you living there in May 1945?

A No, sir.

Q Were you ever taken prisoner or made captive by the Japanese?

A (No response.)

COLONEL PARMELEE: Take a short recess and talk to the witness. Maybe you will put him at his ease.

(Short recess.)

COLONEL PARMELEE: The Commission is in session.

LIEUTENANT EBERHARTER: All members of the Commission are present, the accused, counsel for the defense, and counsel for the prosecution are all present.

BY LIEUTENANT EBERHARTER:

Q Were you ever taken prisoner or captive by the Japanese?

A Yes, sir.

Q What town or city was that?

A In Carocwan.

Q Is that a little barrio of the town of Buguey?

A Yes. sir.

Q Do you remember what date that was?

A May 23, 1945.

Q Where were you at that time? Were you in a house or were you out on the road, or where were you at that time?

A We were asleep in a certain house.

Q Were you alone and, if not, give me the names of all your companions?

A I had companions: Zoilo Tabuzo, Valeriano Tabuzo, Wincislao Tabilis.

Q Was Toribio Navarro with you at that time?

A Yes, sir.

Q Was Juan Tabin with you at that time?

A Yes, sir; and Jesus Pagador.

Q How many were you in all in the house?

A We were eight.

Q Are you, or were you, ever a member of the guerrilla party?

A No, sir.

Q Did you have any firearms in your possession that night?

A I did not have.

Q Now, if you are going to talk in English, I want you to talk loudly. Can you do that?

A Yes, sir.

Q All right. Did any of your companions have any fire-arms in their possession that night?

A There was none.

Q How many Japanese came to your house that night?

A Twelve of them.

Q Were they all soldiers or were there any officers present when they came to your house?

A They were officers among the Japanese who took us.

Q Where did the Japanese take you?

A They took us to Buguey.

Q Is that Centro Buguey?

A Yes, sir.

Q Were you taken inside the Japanese garrison there?

A Yes, sir.

Q And you went inside?

A Just in front of the garrison.

Q In front of the garrison. How long did you stay there?

A An hour; I think an hour.

Q Were you questioned or interrogated by the Japanese when you were at the garrison?

A They were talking to each other but we could not understand them.

Q They were talking in Japanese?

A Yes, sir.

Q Did they ever talk to you, question you?

A They were talking but we could not understand them.

Q Where did you go from there?

A They took us near the well.

Q Did they take all your companions to the well?

A Yes, they took us, my companions.

Q Was Toribio Navarro and Valeriano Tabuzo taken to the well with you and the other companions?

A They were brought first and then we followed them.

Q How much later was it? What period of time elapsed from when they were taken away from the garrison and you followed?

A Maybe thirty minutes.

Q How many soldiers took you to the well with your companions?

A I know three.

Q How many companions were with you at the well?

A They were five.

Q And you had three Japanese guards, is that correct?

A Yes, sir.

Q What happened when you arrived at the well.

A We were tied up.

Q Yes.

A They fixed up their bayonets on their guns and they struck our back with bayonet.

Q Were you bayoneted?

A Yes, sir.

Q How many times?

A Three times.

Q Did you see your other companions bayoneted also?

A Yes, sir, I saw them.

Q Then what did the Japanese do?

A After we were bayoneted we were thrown into the well.

Q Was that well then covered? Did they put any covering over the well?

A No, sir.

Q Did they cover the well with a piece of tin or stones or earth, or anything of that nature?

A It was -- they covered it with a piece of galvanized iron.

Q How long were you in the well before you were able to free yourself and escape?

A I estimated about two hours.

Q When you climbed out of the well were there any of your companions that were still alive?

A I could not recognize them any more.

Q Were any of those men with you in the well, your companions, were any of them still alive?

A There was.

Q They were still alive?

A One of them was alive still.

Q One of them was alive. Were your other companions dead?

A Yes, sir.

Q When you and your companions were bayoneted was there any officer present?

A I saw some soldiers.

Q Just some soldiers. When you were at the garrison did you see any Japanese officers?

A There were.

Q Did you recognize those officers or any one of them?

A Yes, I saw one.

Q Do you know the names of any of those officers?

A I know, sir.

Q What name?

A Captain Miwa, and Yoshida.

Q I want you to look around the courtroom and see if you recognize any of those officers that you mentioned.

A Yes.

Q Would you point him out?

A (Pointing) He is there.

(Witness approached defense table and pointed to accused.)

LIEUTENANT EBERHARTER: Let the record show that the witness properly identified the accused, Tokujiro Yoshida.

COLONEL PARMELEE: The record will so indicate.

Q That man that you have pointed out, Japanese, is that the one that you knew as Captain Miwa or as Yoshida?

A Yoshida.

Q I ask you who that is a photograph of (handed to witness).

A This is my picture; I am the one.

Q When was that picture taken?

A That is November.

Q November?

A Yes.

Q Of 1945?

A Yes.

Q Do you recall who took that picture? If you don't know, just say you don't know.

A I can no longer recall who took it.

Q I ask you who is that a photograph of (picture handed to witness).

A Of me.

Q It is a picture of your back?

A Yes, sir.

Q Showing what?

A Showing the bayonet of my body.

Q When was that photograph taken?

A November 1945.

LIEUTENANT EBERHARTER: The prosecution offers photographs of the witness, Jacinto Alonzo, as Exhibits 7 and 8.

COLONEL CONWAY: Objection by the defense?

LIEUTENANT BERRY: No objection.

COLONEL CONWAY: Prosecution's Exhibits Nos. 7 and 8 will be received in evidence.

(Prosecution's Exhibits 7 and 8 were received in evidence.)

Q Have you completely recovered from your bayonet wounds?

A I still feel it, sir.

Q Before you were taken out with your companions and bayoneted were you ever given a court-martial or a trial?

A (No response.)

Q Jacinto, were you ever questioned or any of your companions before you were bayoneted? Did they question you like I am doing?

A Yes, sir.

Q They questioned you?

A Will you repeat the question?

Q Did the Japanese, any of the Japanese, ever ask you questions like I am asking you now?

A None, sir.

Q Did they ever ask any of your companions any questions?

A No, sir.

Q Are you married?

A Yes, I am married.

Q Do you have any children?

A I have children.

Q How many children do you have?

A Three of them are living.

Q Had you been evacuated to Tapel by the Japanese? Had you been moved out of your home in Buguey and ordered to go to Tapel with your family?

A I did not know that we were evacuated there.

Q What were you doing in Buguey when the Japanese came and got you?

A We were sleeping when they took us.

LIEUTENANT EBERHARTER: You may inquire.

COLONEL PARMELEE: Before the cross-examination

we will take a short recess for the purpose of letting the witness try to get over his nervousness and perhaps take a smoke.

LIEUTENANT EBERHARTER: Thank you, sir.

(Short recess.)

COLONEL PARMELEE: The Commission is in session.

LIEUTENANT EBERHARTER: All members of the Commission are present, the accused, counsel for the defense, and counsel for the prosecution, are all present.

May it please the Commission, I did rest before this last recess with respect to this witness. However, I do have one question I would like to ask.

COLONEL PARMELEE: You may ask the question.

BY LIEUTENANT EBERHARTER:

Q Showing you this photograph, I ask you what is that.

A It is my picture.

Q And where are you pointing?

A I am pointing at the well.

Q Is that the same well that you and your companions were thrown in after you were bayoneted?

A Yes, sir.

Q When was that photograph taken?

A (No response.)

Q Was that photograph taken the same time the other pictures were taken?

A Yes, sir.

Q That would be in November 1945, is that correct?

A Yes, sir.

Q Is that the first time that you were back to that well. after you escaped?

A (No response.)

Q May I ask another question: When this photograph was taken were you pointing into the well? Could you see any bodies or bones at that time?

A I have seen hairs.

Q Could you see any skulls or bones?

A I saw some clothes and hairs.

COLONEL PARMELEE: Will you speak a little louder, please, so the accused and his counsel can hear?

A I saw some clothes and hairs.

Q Could you recognize any of those clothes that you saw in there?

A They were already smeared with dirt and they were wet.

Q Was the well partially filled with earth or dirt?

A Yes.

LIEUTENANT EBERHARTER: The photograph identified by witness, Jacinto Alonzo, is offered as Exhibit No. 9 for the prosecution, sir.

COLONEL CONWAY: Any objection by the defense?

LIEUTENANT BERRY: No, sir.

COLONEL CONWAY: Prosecution's Exhibit No. 9 will be received in evidence.

(Prosecution's Exhibit No.9 was received in evidence.)

LIEUTENANT EBERHARTER: No further questions. You may inquire.

CROSS EXAMINATION

BY LIEUTENANT BERRY:

Q Did you recognize any of the other soldiers who arrested you that night?

A Yes, I could recognize some that were in the garrison.

Q Where did you first see Lieutenant Yoshida?

A At the house where they took us.

Q Had you ever seen him before that night?

A Only on that night.

Q Have you ever seen him since?

A I saw him only that night.

Q Was it a dark night?

A It was dark.

Q What was the name of the man, the soldier, who bayoneted you, if you know?

A I don't know.

Q Did you recognize him as a soldier of the garrison?

A Yes, I recognize him.

Q Did you see his face clearly?

A I could no longer recollect him but I know that he is a soldier.

Q Did you see his face clearly?

A Because it was dark I could not recognize him; he is a Japanese soldier.

Q If it was too dark to recognize him, how did you recognize Captain Yoshida?

A Because on that night there was moonlight and I recognized very well Lieutenant Yoshida.

Q Was there moonlight at the time that you failed to recognize the soldier who bayoneted you?

A It was raining and it was somewhat cloudy.

Q Did it rain all night?

A It rained for some time.

Q Was it raining when you first saw Captain Yoshida?

A Yes, sir.

Q And the moon was out?

A The moon was shining.

Q How deep was the well into which you and your companions were thrown?

A About five feet deep.

Q Who was pushed in first?

A We were thrown in all together.

Q Were the other bodies on top of you?

A Yes, sir.

Q Were your hands tied behind your back?

A Yes, sir.

Q Were they tied tightly?

A It was loose.

Q How deep was the water in the well?

A If I stand up and then the water would be from my feet to the level of my nose.

Q Were you and your companions all tied together when you were in the well?

A We were tied all together side by side.

Q How tall are you?

A I am about four feet.

Q Then the distance from the ground to your eyes would be about three and a half feet, is that correct?

A Maybe three feet.

Q Did you say in your direct examination that there was a corrugated iron sheeting placed over the well after you were thrown in?

A There was.

Q Will you describe to the Commission how you escaped from that well?

A When we were thrown in the well I was below my companions. Then, when I felt that I was drowning I struggled to breathe and go above my companions. I noticed that there were pieces of wood inside the well and some pieces of bamboo joints. I gathered some of the pieces of wood that were inside the well and when I was able to untie my hands -- that was after I was able to untie my hands with the rope with which they were tied up -- then after I have tied in a bundle some pieces of wood, I threw it over the well and I noticed that it was stuck, stuck up there. Then I took another piece of wood on which to step on so I could climb up, and that was how I was able to escape from the well.

Q How long were you under water?

A I was inside the well for about three hours.

Q How long were you under water?

A Maybe about five minutes.

Q You say one of your companions was alive when you left the well.

A While I was still inside the well I heard one screaming

inside the well.

Q Was he alive when you left?

A I don't know if he was still living because I ran away then.

COLONEL PARMELEE: The Commission will now recess until 1330 hours, this date.

(The Commission recessed at 1130 hours, to reconvene at 1330 hours.)

A F T E R N O O N S E S S I O N

The Commission reconvened, pursuant to recess, at 1330 hours.

COLONEL PARMELEE: The Commission is in session.

LIEUTENANT EBERHARTER: All members of the Commission are present, the accused, counsel for the defense, and counsel for the prosecution are all present.

CROSS EXAMINATION (Continued)

LIEUTENANT EBERHARTER: Jacinto, you took an oath to tell the truth before we recessed for lunch.

THE WITNESS: Yes.

LIEUTENANT EBERHARTER: Do you understand you are still under oath to tell the truth?

THE WITNESS: Yes, sir.

BY LIEUTENANT BERRY:

Q When you were attempting to get out of the well, you said that you threw some object over the side of the well with the rope attached to it, or a string; is that true?

A Would you repeat the question?

(Interpreter translated to the witness.)

A That's right. And there was a piece of bamboo which I placed there and by which I went out from the well.

Q How did you manage to do that if there was some galvanized-iron roofing over the top of the well?

A It was not fully covered on top. It was just partially covered.

LIEUTENANT BERRY: That's all.

COLONEL PARMELEE: Redirect?

REDIRECT EXAMINATION

BY LIEUTENANT EBERHARTER:

Q You told me when you first saw Lieutenant Yoshida he was at the garrison -- when you first saw Lieutenant Yoshida and identified him, he was at the garrison; is that correct?

A I saw him in the house where they took us.

Q Was there a light in your house?

A There was none but there was moonlight that night.

Q Was there a light in the Japanese garrison?

A There was.

LIEUTENANT EBERHARTER: No further questions, sir.

COLONEL PARMELEE: Recross?

LIEUTENANT BERRY: No, sir.

COLONEL PARMELEE: Questions by the Commission?

EXAMINATION BY THE COMMISSION

BY COLONEL PARMELEE:

Q What are the names of the companions who were in the well with you?

A Zoilo Tabuzo.

Q Is he the brother of Valeriano Tabuzo?

A Yes, sir.

Q Who are the others?

A Wincislao Tabilis, Sidro Unico, Jesus Pagador, myself. And I don't know the name of the other. There is one more name but I don't know the name.

Q Then how many in all were there in the well, including yourself?

A We were six.

Q Which of those who were in the well did you consider dead?

A Jesus Pagador was one I thought was already dead. Sidro Unico, Wincislao Tabilis, and Zoilo Tabuzo, and the other one -- whose name I do not know -- is dead also.

Q As I recall, the witness testified that one of the men in the well was living. Who was that?

A It was Zoilo Tabuzo's voice that I heard.

Q Was he in the well?

A Yes, we were all inside the well.

Q That makes seven in the well?

A I know of six only that were inside the well.

BY COLONEL CONWAY:

Q How did you know that Yoshida was an officer?

A He had some kind of a belt around his shoulders.

Q Was he armed?

A I did not notice that he had any arms at that time because we were not even allowed to look around.

Q Did you hear Yoshida give any orders?

A Yes, sir.

Q How do you know they were orders?

A Yes, because when he ordered the soldiers, that was the time the soldiers took us.

COLONEL PARMELEE: There are no further questions by members of the Commission. Has the prosecutor any questions to ask, based on the questions asked by the Commission?

LIEUTENANT EBERHARTER: No questions, sir.

COLONEL PARMELEE: Defense?

LIEUTENANT BERRY: No, sir.

COLONEL PARMELEE: The witness is excused.

(Witness excused.)

LIEUTENANT EBERHARTER: May the Ilocano interpreters be excused at this time, if the Commission please? That will be the last witness in that dialect.

COLONEL PARMELEE: They may.

LIEUTENANT EBERHARTER: The prosecution calls as its next witness, Japanese Sergeant Schimekichi Kido.

SCHIMEKICHI KIDO

a witness for the prosecution, being first duly sworn, testified as follows through Interpreters Kato, Baba, and Motoyoshi:

DIRECT EXAMINATION

BY LIEUTENANT EBERHARTER:

Q Will you state your name, please?

A Schimekichi Kido.

Q Are you a member of the Japanese Army?

A Yes.

Q What is your rank?

A Sergeant.

Q Where were you stationed in May of 1945?

A We were in Paddaya, and when we were going into the mountains we passed through Buguey.

Q Were you in Buguey during the month of May 1945?

A Yes.

Q Who was your commanding officer?

A First Lieutenant Yoshida.

Q What was his first name?

A Tokujiro Yoshida.

Q For how long a period of time were you in Buguey?

A From the first part of May to the middle of June.

Q From the first part of May to the middle of June -- that's 1945?

A Yes, sir.

Q Did you ever go on any punitive expeditions when you were in Buguey?

A No.

Q Did you ever take part in severely punishing or executing any Filipino civilians?

A No, sir, I haven't.

Q Did you ever take any Filipino civilians as prisoners when you were in Buguey?

A No.

Q Did Tokujiro Yoshida or any of the men under him ever capture and take as prisoners any Filipino civilians in Buguey?

A Not while I was there.

Q Did you ever talk to me before?

A Yes.

Q When was that?

A On the seventh of March.

Q 1946?

A Yes.

Q Did you tell me at that time that Captain Yoshida had captured nine civilians in Buguey?

A I said I did not know of anything concerning them.

Q You mentioned that Captain Yoshida was your commanding officer. Do you see Captain Yoshida in this courtroom?

A Yes.

Q Will you point him out, please?

A Third from the left (pointing).

LIEUTENANT EBERHARTER: Let the record show that the witness properly identified the accused, Tokujiro Yoshida.

COLONEL PARMELEE: The record will so indicate.

Q Did you ever tell me that Captain Yoshida ordered Sergeant Kunitaki to bayonet the civilian prisoners?

A I said that I was not at that scene so I do not know.

Q Do you know Sergeant Kunitaki?

A I know Kunitaki.

Q Where were you on the night of the 23rd of May, 1945?

A I do not remember clearly.

Q Do you recognize that (handing paper to witness)?

A Yes.

Q Whose signature is that down there?

A It is my signature.

Q Is this all in your own handwriting?

A Yes.

LIEUTENANT EBERHARTER: No further questions.

LIEUTENANT BERRY: May I ask the prosecution at this moment if you have intention to submit that writing into evidence?

LIEUTENANT EBERHARTER: I do after calling my next witness.

CROSS-EXAMINATION

BY LIEUTENANT BERRY:

Q Were you in Buguey on the night of May 23, 1945?

A I do not remember exactly on the 23d.

Q Do you know a Corporal Matsumoto?

A Did something happen on the 23d?

LIEUTENANT BERRY: What was the last answer?

(The last question and answer were read by the reporter.)

Q Do you know a Corporal Matsumoto?

A Yes.

Q What unit was he with?

A He was in our company.

Q Was he in your platoon?

A No, he was not in our platoon.

Q What platoon was he in?

A He was in the second or the third platoon, but I do not remember.

Q What was the number of your platoon?

A The First Platoon.

Q Did you at any time on the 23d of May see Corporal Matsumoto?

A Yes.

Q Under what circumstances did you see him?

A I was on guard duty and I do not know the details but I saw him for a little while when he was bringing in the captured civilians.

Q Was Corporal Matsumoto in charge of the detail that contained the captured civilians?

A Yes.

LIEUTENANT BERRY: That's all.

COLONEL PARMELEE: Redirect?

REDIRECT-EXAMINATION

BY LIEUTENANT EBERHARTER:

Q When I asked you where you were on the 23d of May 1945, you answered you didn't know. How does it happen when defense counsel asks you, you say you were on guard duty?

A I do not remember on the 23d, but I asked you if anything happened, and then --

Q Defense counsel asked you if you saw Matsumoto on the 23d of May 1945. You answered yes. You were asked where you were, and you said you were on guard duty. Were you on guard duty in Buguey on that night?

A Yes, I do not remember the date distinctly.

Q Where were you on guard duty? Were you out walking a post or where?

A On the seashore in Buguey.

Q You say that you saw Corporal Matsumoto as being in charge of some captured civilians? Is that correct?

A Yes.

Q Was Lieutenant Yoshida with you the night that you saw that?

A No.

Q I asked you on direct examination if you yourself ever knew of Lieutenant Yoshida or any of his men making any Filipino civilians captive. I would like to ask that same question.

A You asked me that question but I said that I was not there so I do not know.

Q You say that you saw that Corporal Matsumoto had some Filipino civilians made captives. You actually saw that with your eyes, did you not?

A I saw Matsumoto capturing the civilians, but I did not see Lieutenant Yoshida capture any civilians.

Q The statement that you wrote out for me in Japanese and signed, was there any force, threats, or violence of any nature used against you to obtain that statement?

A I was fooled in one point. There was a mistake at one point.

Q You made a mistake at one point? When did you first find out that youmade that mistake?

LIEUTENANT BERRY: I might clarify that. There is a possibility that it was on that subject that we had discussed with regard to interpretation of that one word.

LIEUTENANT EBERHARTER: I want to find out when he found out about that.

A I was made to misbelieve on one point.

Q What point was it that you were made to misbelieve, or fooled?

A Will you mention the name of the lieutenant who questioned me?

Q Lieutenant Eberharter.

A That person fooled me.

Q When was the next time you saw Lieutenant Eberharter?

A I have not seen him since; that was a long time ago.

Q Do you recognize me as the same individual that talked to you at Quartermaster Depot No. 17 and secured that statement?

A Yes.

Q How did I fool you?

A You told me that Corporal Kimura returned to Japan in early December but he has not returned. You told me that Corporal Kimura had returned to Japan the 3d of December, but he has not returned.

Q As a matter of fact, didn't I tell you that I had talked to and secured a statement from Corporal Kimura at Luzon POW Camp No. 1?

A It seemed to me that the Lieutenant sort of planned that if I told him all that I knew, that he would facilitate my return to Japan. However, I cannot say anything about things that I do not know.

Q Do you mean to say that you lied in that statement? Were you telling the untruth when you wrote out that statement?

A No.

Q In other words, the statement was telling the truth, is that right?

A Yes.

LIEUTENANT EBERHARTER: That's all.

COLONEL PARMELEE: The Commission will recess for about ten minutes.

(Recess)

COLONEL PARMELEE: The Commission is in session.

LIEUTENANT EBERHARTER: All members of the Commission are present, the accused, counsel for the defense, and counsel for the prosecution, are all present.

I turned the witness over before the recess, Lieutenant Berry.

LIEUTENANT BERRY: I don't think that I have any questions of the witness now, but it may be necessary to recall him afterwards.

COLONEL PARMELEE: Very well. Questions by the Commission at this time?

EXAMINATION BY THE COMMISSION

BY COLONEL CONWAY:

Q What was the name of your company?

A The Akasaka Unit I 17615 Force.

Q What were your duties in the First Platoon?

A I was in charge of supply.

Q Did you ever hear of any guerrilla activity at Buguey?

A No.

COLONEL PARMELEE: No further questions by the Commission at this time. By the prosecution?

LIEUTENANT EBERHARTER: No further questions.

COLONEL PARMELEE: Defense?

LIEUTENANT BERRY: None.

COLONEL PARMELEE: The witness is excused.

(Witness excused.)

LIEUTENANT EBERHARTER: The prosecution calls as its next witness T/3 Noel Tsuneishi.

NOEL TSUNEISHI

a witness for the prosecution, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY LIEUTENANT EBERHARTER:

Q. Will you please state your name, rank, and serial number.

A T/3 Noel Tsuneishi, 37365040.

Q What nationality are you?

A Japanese.

Q Where were you born?

A In California.

COLONEL PARMELEE: Sergeant, will you speak up a little louder, please.

Q What experience or what learning have you had with the Japanese language?

A I spoke it at home with my parents, and I went to a Japanese school back in California, and about seven months at the Military Intelligence Service Language School.

Q That was after you were in the army?

A Yes, sir.

Q Did you have occasion to accompany me to Quartermaster Depot 17 and interview Japanese Sergeant Kido Schimekichi?

A Yes, sir.

Q Do you recall what date that was?

A No, it is about two months ago, I believe.

Q Where did we talk to Sergeant Kido?

A It was in a dayroom, I believe.

Q In a dayroom. Was there any one present besides us three?

A No.

Q Did I at any time leave the room and leave you alone with Sergeant Kido, or did you ever leave the room and leave me alone with Sergeant Kido?

A I don't think so.

Q Was there any force, threat, or violence of any kind, or promises used in talking to Sergeant Kido?

A No, sir.

Q Did we secure a statement from him?

A Yes, sir.

Q How was that statement written?

A Sergeant Kido wrote it in Japanese.

Q I would ask him a question, you would interpret it, and then we would get him to write it in Japanese, is that correct?

A Yes, sir.

Q Was every question and answer that was spoken written down by Sergeant Kido?

A I don't quite get you.

Q Everything that I asked, and everything that he answered, was that written down by him?

A I don't think everything that was said was written down.

Q Did you make a translation of the statement that he gave?

A Yes, sir.

Q I ask you what that is (paper handed to witness).

A This is a typewritten copy of that translation.

Q Is that your signature?

A Yes, sir.

Q Is that a translation of that statement (another paper handed to witness)?

A Yes, sir.

Q And this statement here is the one that was written by Sergeant Kido in Japanese, is that correct?

A Yes, sir.

Q Was there any question about some of the interpretation of this statement?

A There was one sentence in there which there was a question about.

Q Please talk up so everybody can hear you. Do you recall what that sentence was?

A It was a sentence in which there was some doubt as to whether he meant that he heard Captain Yoshida give the order or whether he heard that Captain Yoshida gave the order.

Q And how did you translate it?

A I interpreted it as, he heard that Captain Yoshida gave the order.

Q He heard that, or that he heard?

A He heard.

Q You interpreted that he heard Captain Yoshida ordering the bayoneting of the prisoners, is that right?

A Yes, sir.

Q Why did you interpret it that way if there was some question?

A Because we questioned him further on the point and he

stated that he had heard the Captain give the orders.

Q In other words, we went over that more than once to be sure that he had heard the order given, is that correct?

A Yes, sir.

LIEUTENANT EBERHARTER: Prosecution offers into evidence Prosecution's Exhibit No. 10, which is a Japanese statement written by Sergeant Kido and Prosecution's Exhibit No. 10-A, which is a translation from Japanese to English of Sergeant Kido's statement..

COLONEL CONWAY: Any objection on the part of the defense?

LIEUTENANT BERRY: No, sir.

COLONEL CONWAY: Prosecution's Exhibits 10 and 10-A will be received in evidence.

(Prosecution's Exhibits 10 and 10-A were received in evidence.)

LIEUTENANT EBERHARTER: Does the Commission desire the prosecution to read the Exhibit 10-A? I thought it better to offer it as an exhibit rather than incorporate it into the record in view of the Japanese statement.

COLONEL PARMELEE: I believe it would be well to incorporate it into the record by reading it.

LIEUTENANT EBERHARTER: Yes, sir.

COLONEL PARMELEE: That seems to be the wish of the Commission.

LIEUTENANT EBERHARTER: (Reading)

"6 March 1946

Army Sergeant: KIDO, Shimekichi, Age: 30 Married

Fukuoka Ken, Yamata Gun, Ryokai mura Coaza, Nishihiraki #152

From 6 December 1943 to 19 March 1944

From 7 August 1944 to 10 September 1945

Subordinate of Captain YOSHIDA

March 1945 -- Stationed at 'PADDAYA' as a coastal guard unit.

Until May 1945

May 1945 until 19 June of the same year, stationed at 'BUGUEY' as a coastal guard unit.

About March 1945 took 3 girls from 'DALAYA SUR' to 'PADDAYA. After 3 days, only the 3 girls went back to 'DALAYA SUR.' Learned for the first time that the 3 girls were killed after the pictures were shown by Lt. Eberharter.

I had heard that Medical Officer, Captain IMADA was formerly well acquainted with 'UGALE' one of the three girls, as I should think that Medical Officer, Captain IMADA, has some kind of connection with the killing of the 3 girls.

The girls taken from 'DALAYA SUR' were the above mentioned UGALE and two other girls.

Towards the end of May 1945, Captain YOSHIDA captured 9 civilians at 'BUGUE' and ordered Sgt. KUNITAKE and about 10 of his men to bayonet them. In the midst of bayonetting them, 2 of the 9 civilians began to escape. During their escape, Sentry TAGAWA, Shigenori challenged them but there was no answer and they tried to cross the Sentry line so TAGAWA, Shigenori fired at them and killed one of the two but the other escaped.

It was reported to Captain YOSHIDA that 7 of the above mentioned 9 were killed and thrown in the well. That the cadavers were covered with galvanized iron and stones. During the time they were taken to the place where they were to be bayonetted to death, their hands were tied with a rope so that they could not escape. The 7 who were bayonetted and the other two were seized in the middle of the night before the bayonetting, and were bayonetted to death about dawn.
I was on guard duty at that time and I didn't go to the place of bayonetting nor did I participate in the bayonetting. I heard Captain YOSHIDA ordering the bayoneting and Sgt. KUNITAKE reporting on the state of the bayonetting.
In regards to the above mentioned incident, there were no Court Martials nor any special trial.
I swear that this testimony is true to the best of my knowledge. There were no threats or promises during this inquiry and I testify that it was done voluntarily.

Army Sgt. KIDO, Shimekichi

COMMONWEALTH OF THE PHILIPPINES)
) SS
CITY OF MANILA)

I, Noel TSUNEISHI, T/3, ASN 37365040, being duly sworn on oath, state that the attached statement is a true and complete translation from Japanese to English of the statement written by Japanese Army Sergeant Shimekichi KIDO in my presence and in the presence of Frank J. EBERHARTER, 2d Lt., Inf., W.C.I.D.

/s/ T/3 Noel Tsuneishi
/t/ T/3 NOEL TSUNEISHI

Subscribed and sworn to before me this 11th day of March 1946.

/s/ Abraham Fishman
Capt., JAGD."

LIEUTENANT EBERHARTER: Your witness.

CROSS EXAMINATION

BY LIEUTENANT BERRY:

Q Sergeant, in the original Japanese translation, referring to the sentence, "I heard Captain Yoshida ordering the bayoneting," et cetera -- was there any question in the translation of the word "heard"?

A According to the written Japanese, probably the best translation would be, "I heard that Captain Yoshida ordered the killing." But I interpreted it the other way because of the subsequent questioning.

Q But on the basis of the statement itself, which is signed by the sergeant who previously testified, it would indicate that the sergeant heard about this bayoneting, or at least the order to bayonet, rather than personally hearing the order given; is that correct?

A Yes, on the basis of the statement itself.

LIEUTENANT BERRY: That's all.

COLONEL PARMELEE: Redirect?

LIEUTENANT EBERHARTER: No further questions, sir.

COLONEL PARMELEE: Questions by the Commission? There are no questions by the Commission. The witness is excused.

(Witness excused.)

LIEUTENANT EBERHARTER: Sir, the prosecution rests.

COLONEL PARMELEE: Is the defense ready to proceed at this time?

LIEUTENANT BERRY: At the pleasure of the Commission,

I would make an opening statement, and then apprise the Commission and the prosecution of approximately what I intend to do; and then the time element will be within the jurisdiction of the Commission to determine whether or not we should go ahead with the case or recess, or whatever the Commission would like.

COLONEL PARMELEE: The Commission would like to proceed as far as we can go.

LIEUTENANT BERRY: Then I'll present my opening argument at this time.

COLONEL PARMELEE: You may proceed.

LIEUTENANT BERRY: It is the purpose of the defense in this case to outline the conditions that prevailed in the area in which these incidents are alleged to have occurred. We will also show that the incidents alleged were not committed by the accused or at his order. We will use for that purpose the accused himself, and at this time the accused will take the stand to testify under oath.

TOKUJIRO YOSHIDA

a witness in his own behalf, was duly sworn and testified as follows through Interpreters Kato, Baba, and Motoyoshi:

DIRECT EXAMINATION

BY LIEUTENANT BERRY:

Q What is your name?

A Tokujiro Yoshida.

Q What is your present rank?

A Captain.

Q What was your rank on 23 May 1945?

A First lieutenant.

Q Where were you from in Japan?

A Fukuoka Prefecture.

Q Where did you go to school in Japan?

A Imperial University at Tokyo.

Q What was your business or profession before you were in the army?

A I was in the sea-transportation business.

Q Are you married?

A Yes.

Q Do you have any children?

A Yes, three.

Q When did you come into the army?

A In December 1943.

Q When and where were you first stationed in the Philippines?

A In Manila, in April 1944.

Q Where did you go from there?

A Lomismo.

Q When did you go to Paddaya?

A The latter part of October 1944 -- just a moment.

(The accused walked over to defense table, picked up booklet, then resumed witness stand.)

A (Continued) The latter part of October 1944 (referring to booklet).

Q What province is that in?

A Cagayan Province.

Q How far is Paddaya from Buguey.

A From eight to ten kilometers.

Q Are both towns on the northern coast of Luzon?

A Yes.

Q Were you in Paddaya about the month of January 1945?

A Yes.

Q Would you describe for the Commission the conditions that prevailed in that area from January of 1945 until you were finally apprehended by the American army -- all through that area, on the seacoast, and what your duties were?

A My duties were to keep a look-out for possible landings of American troops on the coast of Paddaya. Our duties were to guard the coast along there. We were not a garrison. Our main duty was just to keep a look-out for possible landings of American troops. Therefore, we did not have security guards or go out on punitive expeditions or on reconnaissance; mainly coast observation.

LIEUTENANT EBERHARTER: Is this all in answer to one question?

LIEUTENANT BERRY: Yes, I imagine so. It's a detailed account of his duties and conditions there.

A (Continuing) As for the conditions: From January 1945 there were almost daily bombings by United States airplanes of Aparri, Buguey, Lal-lo, Badia, and Pattao, and in the vicinities. This was almost day and night. After March, as for movement of ships, there were some during the night. From the latter part of February a military zone was established. This was by orders from the division headquarters.

INTERPRETER BABA: This map of accused describes that zone (handing map to president).

LIEUTENANT EBERHARTER: I have no objection if you want to offer that as an exhibit.

COLONEL PARMELEE: Has the prosecution seen this map?

LIEUTENANT EBERHARTER: No, I haven't, sir.

COLONEL PARMELEE: Before the Commission receives it, we want a chance for both the prosecution and the defense to --

LIEUTENANT BERRY: These are papers by the accused to refresh his own memory.

COLONEL PARMELEE: They are his personal memoranda, so to speak?

LIEUTENANT BERRY: Personal memoranda. He has used that to refresh his memory and explain to his counsel. We didn't know whether it would be necessary to use them as exhibits in the trial or not. It will depend entirely on the prosecution.

LIEUTENANT EBERHARTER: I have no objection.

COLONEL PARMELEE: Well, there seems to be no need

to introduce that in evidence. It will just be used by the Commission to follow the --

LIEUTENANT BERRY: That's satisfactory to me.

LIEUTENANT EBERHARTER: That's satisfactory, sir.

COLONEL PARMELEE: Very well. We will proceed with that agreement.

A (Continued) The civilians were restricted from this military zone. After the zone was set up, civilians were not allowed to live there. And later on, they were forbidden to even enter the zone. Those people which entered the zone were considered sympathetic to the enemy, and this fact was well known to the civilians also.

Q Captain, was there much guerrilla activity in that area at that time?

A By "at that time," what do you mean?

Q At the time that this was declared to be a combat zone or a military zone.

A I don't know.

Q Was there any extensive guerrilla activity in Paddaya in the month of April or of the early part of May?

A I have not heard of that.

Q Did you know of any activities of the Bolo Unit?

A Yes, I have.

Q What did they do?

A I don't know what they did. I have heard that they caused grievance to the Japanese troops.

Q Do you know if there were any attempts by the residents in this area to signal airplanes or signal American

ships at sea by rockets or anything else?

A During the afternoon there were smoke signals, and at night a flashing of lights and flares.

Q Did you ever have any trouble with the residents of Paddaya?

A You mean me personally?

Q Yes.

A Several days after the military zone was set up, about two hundred residents tried to return to Paddaya but because they were restricted I had to turn them back. From the point of regulation, I was supposed to treat them as enemy sympathizers, but because I knew them I treated them with kindness and I tried my best to be lenient to them.

Q When did you go to Buguey, and why?

A I went to Buguey once in January 1945, and then about the 10th of May, 1945. The reason for going to Buguey in January was by orders of the battalion commander to take one day training for coastal observation. The reason for going to Buguey in May was upon orders to move to the mountains.

Q Were you in Buguey on the 23rd of May 1945?

A Yes.

Q Would you tell the Commission what you know about the incidents alleged to have taken place there in relation to the killing of some people and putting them in the well?

COLONEL PARMELEE: The Commission will recess for about ten minutes at this time.

(Short recess.)

COLONEL PARMELEE: The Commission is in session.

LIEUTENANT EBERHARTER: All members of the Commission are present, the accused, counsel for the defense and counsel for the prosecution are all present.

DIRECT EXAMINATION (Cont'd)

BY LIEUTENANT BERRY:

Q Captain, will you tell us what you know of the events that occurred on the 23d of May, 1945 in Buguey?

A I do not know what occurred at 23 May 1945.

Q Do you know a Corporal Matsumoto?

A Yes, I know him.

Q Did you see him at any time on the evening of the 23d of May, 1945?

A I do not recall the exact date but the latter part of May I saw Corporal Matsumoto.

Q Under what circumstances did you see him?

A On that occasion Corporal Matsumoto was on patrol for the Akasaka Unit towards the lower regions of the Buguey river. On the way back from his reconnaissance he happened to pass through Buguey. That is when I met him.

Q Is Corporal Matsumoto in your outfit, your unit?

A He is not in my platoon.

Q Did you ever see him bringing any captive Filipinos through the town of Buguey?

A Yes, I did.

Q When was that, do you recall?

A The latter part of May.

Q Do you recall if any of the witnesses who testified

for the prosecution were in that group that Corporal Matsumoto had charge of?

A That I do not know very well.

Q When you saw Corporal Matsumoto do you recall how many Filipinos he had in charge?

A I think it was nine persons.

Q Did you have any conversation with Corporal Matsumoto at that time?

A Yes, I did.

Q What did you say to him?

A The contents of the conversation were, I asked him, "Where did you go? Where did you capture these civilians?" And I asked him the conditions of the vicinity.

Q What did he tell you?

A He said that he captured these civilians in the lower regions of the Buguey river. He said they were in a house late at night with bright lights, and that they had bolos, and he said that he thought they were an element of the Bolo Unit, and that late at night ships were moving about around the coast.

Q Did Corporal Matsumoto tell the captain where he was bringing the nine captives?

A He said he was taking them to the company to which he was attached.

Q Did he then leave with them?

A Yes, he did.

Q Did you ever see the nine captives again?

A I have never seen them again.

Q Did you ever hear what happened to them?

A No, I have not heard.

Q Did you have anything to do with the deaths of any civilians at Buguey in the month of May, 1945?

A I had no connection whatsoever. I don't know about them.

LIEUTENANT BERRY: That's all.

COLONEL PARMELEE: Cross examination?

CROSS EXAMINATION

BY LIEUTENANT EBERHARTER:

Q I noticed on numerous questions on direct examination you would refer to a book or some writing. I wonder if I could see that.

(Papers handed to prosecutor.)

Q Is this all in your own handwriting?

A Yes, it is.

Q Did anyone help you prepare it, Captain?

A No, no one else has ever seen it.

Q When did you prepare it? When did you write it?

A When I was at Camp No. 4.

Q At Compound No. 4, Luzon POW Camp No. 1?

A At Lupow.

Q What date was that, Captain?

A You mean when I wrote this?

Q Yes.

A The latter part of April.

Q The latter part of April, 1946?

A Yes, sir, that is right.

Q Was that before or after the Charge and Specifications were served on you by me?

A After the Charge and Specifications were served.

Q You stated you are a graduate of the Imperial Japanese University. I believe you told me once before you majored in political science and law, is that correct?

A Yes, political science and law.

Q What were Sergeant Kido's duties?

A At what time?

Q When he was in Buguey.

A He was the NCO in charge of liaison.

Q Was he ever a supply sergeant? That is, was he ever a supply sergeant when he was under your command?

A Yes, he was also in charge of supplies.

Q I believe on direct examination you mentioned the town of Lal-lo. Were you ever there, Captain?

A I have never been to Lal-lo. When I was coming down from the mountains I was in the concentration camp at Lal-lo.

Q Were the civilians restricted from Aparri as well as Buguey? You mentioned they were restricted from Buguey. Were they restricted from Aparri also?

A When was that?

Q At the same time they were restricted in Buguey.

A Yes, Aparri was also part of the military zone.

Q They were restricted from there in order to protect them from American bombing, is that correct?

A Are you asking me the reasons for the military zone?

Q Yes.

A In case the American troops should land, this area would become a battle area and it was for the purpose of evacuating them.

Q Was there any more reason to suspect that the Americans would land in Buguey than there was in Tapel where there was bombing continually night and day the same as you mentioned in Buguey?

A I don't know anything about the bombings of Tapel. However, there is a battalion order that they had received intelligence information for possible landings in the Buguey-Paddaya area.

Q Were you in Paddaya or Buguey when the order came out for the civilians to evacuate, assuming there was such an order?

A I was in Paddaya.

Q Were the civilians allowed to take any food with them?

A Yes, they could.

Q You mentioned on direct examination that you never heard of any guerrilla activities in April or May in Paddaya, is that correct?

A Yes, that is so.

Q Did you ever hear of any guerrilla activity in Buguey?

A Yes, sir, I have heard.

Q Did you ever have any fights with any guerrillas, you or your men?

A No, I have not.

Q Did the guerrillas ever attack you or any of your men?

A You mean my platoon?

Q That's right.

A No, they had never.

Q How long were you stationed in Buguey?

A About twenty days.

Q Do you ever remember telling me that you were only in Buguey overnight?

A I did not say one night. The officer asked me whether I had stopped in Buguey and I said I had.

Q In answer to a question, "You mentioned you left Buguey around the middle of May, 1945. Is it not a fact that you were present in Buguey on May 23, 1945?" did you answer, "Wher. I went from Paddaya to the mountains I passed through Buguey. It would be around that date"?

A At the time of the questioning the interpreter asked me where I went from Paddaya. I said that I passed from Paddaya going to the mountains -- I passed through Buguey. I left Paddaya on the 10th of May and the latter part of May I arrived in the mountains. In regards to the date, I said that I had no exact recollection.

Q As a matter of fact, you recall saying that all you did was pass through Buguey, and then I asked you if you stayed overnight and you answered "yes."

A The officer did not ask me whether I stayed overnight in Buguey. He asked me whether I had billeted in Buguey, so I answered that I had.

Q Who was the officer that questioned you?

A This officer here (pointing to Lieutenant Eberharter).

Q As a matter of fact, this story that you have written out and you have referred to in answer to questions on direct examination -- did you not make that after you saw copies of statements of men under your command?

A No, that is not so. I have never seen the statements of my subordinates.

Q How many corporals did you have under your command?

A I think it was two.

Q Was Corporal Matsumoto under Sergeant Kunitake?

A No, that is not so.

Q Corporal Matsumoto was not under your command then; is that right?

A No, he is not under my command.

Q Do you deny that you were present with your men, about twelve of your men, and went to a house and took captive eight or nine Filipino civilians who were sleeping there at that time?

A Yes, I can say that I did not go to a house and capture eight or nine civilians. I can positively say that I did not go to a house and capture eight or nine civilians.

Q Were you present in garrison headquarters when you saw Corporal Matsumoto and those civilian captives?

A What do you mean "garrison headquarters"?

Q Your headquarters in Buguey.

A Do you mean the observation --

Q I mean your headquarters in Buguey, wherever that was, whether it was a house or any kind of a building; where you would make your headquarters.

A It was at my headquarters.

Q Would you tell me the discussion, if any, you had with Corporal Matsumoto?

A It was, as I said before, I asked Corporal Matsumoto, "Where did you capture them; what were they doing, and the condition of the vicinity?"

Q And then what did you say? After he told you all about that, what did you say?

A I did not say anything.

Q Was Sergeant Kido with you that night?

A Yes, he was.

Q Was Sergeant Kunitake also there?

A Sergeant Kunitake was not there.

Q Where was he?

A I think he was in his own quarters.

Q Did Corporal Matsumoto tell you what he was going to do with those nine prisoners?

A No, he did not say anything. He was just acting on company orders and was taking them back.

Q Taking them back where?

A He had no right to act on his own accord. Corporal Matsumoto took the captive man back to the company headquarters to which he was attached.

Q Where was the company headquarters then?

A It was in the mountains of Pattao.

Q Did you recognize any of those prisoners that were with Corporal Matsumoto? Did you recognize any of them?

A I did not recognize any of them.

Q Do you speak English?

A (In English) No.

Q Is it possible that we are talking about two different groups of captives -- one that Corporal Matsumoto had and one that you ordered Sergeant Kunitake to take out and bayonet? Is that possible?

A That I do not know. I never gave any orders to Sergeant Kunitake to execute civilians. I do not know whether it was the same group or two different groups.

LIEUTENANT EBERHARTER: No further questions, sir.

COLONEL PARMELEE: The Commission will recess now until 0830 hours, 27 May 1946. Will the defense be prepared to go ahead?

LIEUTENANT BERRY: We will be prepared for final argument as soon as this witness is through.

COLONEL PARMELEE: Very well. When we reconvene, then, redirect examination will be in order.

LIEUTENANT EBERHARTER: Sir, do I understand that the defense will call no further witnesses?

LIEUTENANT BERRY: I only have two other possible

witnesses. I think I discussed that with you before. I don't think I will find it necessary to call them.

LIEUTENANT EBERHARTER: I will be prepared for final argument also, then, sir.

LIEUTENANT BERRY: Is that agreeable?

LIEUTENANT EBERHARTER: That's agreeable.

COLONEL PARMELEE: Very well. Redirect examination of the present witness will be in order at 0830 hours, 27 May 1946.

(The Commission adjourned at 1620 hours, 25 May 1946, to reconvene at 0830 hours, 27 May 1946.)

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RESTRICTED

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

AG 000.5 (5 Dec 45) LS — APO 500
5 December 1945

SUBJECT: Regulations Governing the Trials of Accused War Criminals.

TO : Commander-in-Chief, United States Army Forces, Pacific, APO 500
Commanding General, Sixth Army, APO 442
Commanding General, Eighth Army, APO 343
Commanding General, XXIV Corps, APO 235

The following rules and regulations will govern the trials of persons, units and organizations accused as war criminals:

1. ESTABLISHMENT OF MILITARY COMMISSIONS.

a. General. Persons, units and organizations accused as war criminals will be tried by military commissions to be convened by, or under the authority of, the Supreme Commander for the Allied Powers.

b. Number and Types. The commissions will be established dependent upon the number, nature of the offenses involved and the offenders to be tried. Such commissions may include, among others, international military commissions consisting of representatives of several nations or of each nation concerned, appointed to try cases involving offenses against one (1) or more nations.

2. JURISDICTION.

a. Over Persons. The military commissions appointed hereunder shall have jurisdiction over all persons charged with war crimes who are in the custody of the convening authority at the time of the trial.

b. Over Offenses.

(1) Military commissions established hereunder shall have jurisdiction over all offenses including, but not limited to, the following:

(a) The planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

U.S.A. vs TOKUJIRO YOSHIDA ET AL
PROSECUTION
DEFENSE
COMMISSION
RECEIVED 25 May 46
EXHIBIT NO. 1

RESTRICTED

(b) Violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory; murder or ill-treatment of prisoners of war or internees or persons on the seas or elsewhere; improper treatment of hostages; plunder of public or private property; wanton destruction of cities, towns or villages; or devastation not justified by military necessity.

(c) Murder, extermination, enslavement, deportation and other inhuman acts committed against any civilian population before or during the war, or persecutions on political, racial or religious grounds in execution of, or in connection with, any crime defined herein, whether or not in violation of the domestic laws of the country where perpetrated.

(2) The offense need not have been committed after a particular date to render the responsible party or parties subject to arrest, but in general should have been committed since or in the period immediately preceding the Mukden incident of September 18, 1931.

3. MEMBERSHIP OF COMMISSION.

a. Appointment. The members of each military commission will be appointed by the Supreme Commander for the Allied Powers, or under authority delegated by him. Alternates may be appointed by the convening authority. Such alternates shall attend all sessions of the commission, and in case of illness or other incapacity of any principal member, an alternate shall take the place of that member. Any vacancy among the members or alternates, occurring after a trial has begun, may be filled by the convening authority, but the substance of all proceedings had and evidence taken in that case shall be made known to that new member or alternate in open court before the trial proceeds.

b. Number of Members. Each commission shall consist of not less than three (3) members.

c. Qualifications. The convening authority shall appoint to the commission persons whom he determines to be competent to perform the duties involved and not disqualified by personal interest or prejudice, provided that no person shall be appointed to hear a case which he personally

investigated, nor if he is required as a witness in that case. A commission may consist of Army, Navy or other service personnel, or of both service personnel and civilians. One specially qualified member shall be designated as the law member whose ruling is final insofar as concerns the commission on an objection to the admissibility of evidence offered during the trial.

d. Voting. Except as to the admissibility of evidence, all rulings and findings of the commission shall be by majority vote, except that conviction and sentence shall be by the affirmative votes of not less than two-thirds (2/3) of the members present.

e. Presiding Member. In the event that the convening authority does not name one of the members as the presiding member, the senior officer among the members of the commission present shall preside, or such other member as the senior officer may designate.

4. PROSECUTORS.

a. Appointment. The convening authority shall designate one or more persons to conduct the prosecution before each commission. Where offenses involve nationals of more than one nation, each nation concerned, in the discretion of the convening authority, may be represented among the prosecutors.

b. Duties. The duties of the prosecutors are:

(1) To prepare and present charges and specifications for reference to a commission.

(2) To prepare cases for trial and to conduct the prosecution before the commission of all cases referred for trial.

5. POWERS AND PROCEDURE OF COMMISSIONS.

a. Conduct of the Trial. A commission shall:

(1) Confine each trial strictly to a fair, expeditious hearing on the issues raised by the charges, excluding irrelevant issues or evidence and preventing any unnecessary delay or interference.

(2) Deal summarily with any contumacy or contempt, imposing any appropriate punishment therefor.

(3) Hold public sessions except when otherwise decided by the commission.

(4) Hold each session at such time and place as it shall determine, or as may be directed by the convening authority.

b. Rights of the Accused. The accused shall be entitled:

(1) To have in advance of trial a copy of the charges and specifications clearly worded so as to apprise the accused of each offense charged.

(2) To be represented, prior to and during trial by counsel appointed by the convening authority or counsel of his own choice, or to conduct his own defense.

(3) To testify in his own behalf andhave his counsel present relevant evidence at the trial in support of his defense, and cross-examine each adverse witness who personally appears before the commission.

(4) To have the substance of the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them.

c. Witnesses. The Commission shall have power:

(1) To summon witnesses and require their attendance and testimony under penalty; to administer oaths or affirmations to witnesses and other persons and to question witnesses.

(2) To require the production of documents and other evidentiary material.

(3) To delegate to the Prosecutors appointed by the convening authority the powers and duties set forth in (1) and (2), above.

(4) To have evidence taken by a special commissioner appointed by the commission.

d. Evidence.

(1) The commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or such as in the commission's opinion would have probative value in the mind of a reasonable man. The commission

shall apply the rules of evidence and pleading set forth herein with the greatest liberality to achieve expeditious procedure. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted:

(a) Any document irrespective of its classification which appears to the commission to have been signed or issued by any officer, department, agency or member of the armed forces of any government without proof of the signature or of the issuance of the document.

(b) Any report which appears to the commission to have been signed or issued by the International Red Cross or a member thereof, or by a doctor of medicine or any medical service personnel, or by an investigator or intelligence officer, or by any other person whom the commission considers as possessing knowledge of the matters contained in the report.

(c) Affidavits, depositions or other signed statements.

(d) Any diary, letter or other document, including sworn or unsworn statements, appearing to the commission to contain information relating to the charge.

(e) A copy of any document or other secondary evidence of its contents, if the original is not immediately available.

(2) The commission shall take judicial notice of facts of common knowledge, official government documents of any nation, and the proceedings, records and findings of military or other agencies of any of the United Nations.

(3) A commission may require the prosecution and the defense to make a preliminary offer of proof, whereupon the commission may rule in advance on the admissibility of such evidence.

(4) If the accused is charged with an offense involving concerted criminal action upon the part of a military or naval unit, or any group or organization, evidence which has been given previously at a trial resulting in the

conviction of any other member of that unit, group or organization, relative to that concerted offense, may be received as prima-facie evidence that the accused likewise is guilty of that offense.

(5) The findings and judgment of a commission in any trial of a unit, group, or organization with respect to the criminal character, purpose or activities thereof shall be given full faith and credit in any subsequent trial, by that or any other commission, of an individual person charged with criminal responsibility through membership in that unit, group or organization. Upon proof of membership in that unit, group or organization convicted by a commission, the burden shall be on the accused to establish by proof any mitigating circumstances relating to his membership or participation therein.

(6) The official position of the accused shall not absolve him from responsibility, nor be considered in mitigation of punishment. Further, action pursuant to order of the accused's superior, or of his government, shall not constitute a defense, but may be considered in mitigation of punishment if the commission determines that justice so requires.

(7) All purported confessions or statements of the accused shall be admissible without prior proof that they were voluntarily given, it being for the commission to determine only the truth or falsity of such confessions or statements.

e. Trial Procedure. The proceedings at each trial will be conducted substantially as follows, unless modified by the commission to suit the particular circumstances:

(1) Each charge and specification will be read, or its substance stated, in open court.

(2) The presiding member shall ask each accused whether he pleads "Guilty" or "Not guilty".

(3) The prosecution shall make its opening statement.

(4) The presiding member may, at this or any other time, require the prosecutor to state what evidence he proposes to submit to the commission, and the commission thereupon may rule upon the admissibility of such evidence.

(5) The witnesses and other evidence for the prosecution shall be heard or presented. At the close of the case for the prosecution, the commission may, on motion of the defense for a finding of not guilty, consider and rule whether the evidence before the commission supports the charges against the accused. The commission may defer action on any such motion and permit or require the prosecution to reopen its case and produce any further available evidence.

(6) The defense may make an opening statement prior to presenting its case. The presiding member may, at this or any other time, require the defense to state what evidence they propose to submit to the commission, whereupon the commission may rule upon the admissibility of such evidence.

(7) The witnesses and other evidence for the defense shall be heard or presented. Thereafter, the prosecution and defense may introduce such evidence in rebuttal as the commission may rule admissible.

(8) The defense, and thereafter the prosecution, shall address the commission.

(9) The commission thereafter shall consider the case in closed session and unless otherwise directed by the convening authority, announce in open court its judgment and sentence, if any. The commission may state the reasons on which the judgment is based.

f. Record of Proceedings. Each commission shall make a separate record of its proceedings in the trial of each case brought before it. The record shall be prepared by the prosecutor under the direction of the commission and submitted to the defense counsel. The commission shall be responsible for its accuracy. Such record, certified by the presiding member of the commission or his successor, shall be delivered to the convening authority as soon as possible after the trial.

g. Sentence. The commission may sentence an accused, upon conviction, to death by hanging or shooting, imprisonment for life or for any less term, fine or such other punishment as the commission shall determine to be proper. The commission may also order confiscation of any property of a convicted accused, deprive that accused of any stolen property or order its delivery to the Supreme Commander for the Allied Powers for disposition as he shall find to be proper, or may order restitution with appropriate penalty in cases of default.

h. Approval of Sentence. No sentence of a military commission shall be carried into effect until approved by the officer who convened the commission, or his successor. Such officer shall have authority to approve, mitigate, remit in whole or in part, commute, suspend, reduce or otherwise alter the sentence imposed, or (without prejudice to accused) remand the case for rehearing before a new military commission; but he shall not have authority to increase the severity of the sentence. No sentence of death shall be carried into execution until confirmed by the Supreme Commander for the Allied Powers. Except as herein provided, the judgment and sentence of a commission shall be final and not subject to review.

6. RULE MAKING POWER.

Supplementary Rules and Forms. Each commission shall adopt rules and forms to govern its procedure, not inconsistent with the provisions hereof, or such rules and forms as may be prescribed by the convening authority or by the Supreme Commander for the Allied Powers.

By command of General MacARTHUR:

H. W. ALLEN,
Colonel, A.G.D.,
Asst Adjutant General.

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

APO 500
March 1946

AG 000.5 (27 Mar 46) LS

SUBJECT: Trial of Takujira Yoshida.

TO : Commander-in-Chief
United States Army Forces, Pacific, APO 500.

1. It is desired that a Military Commission be appointed for the trial of Takujira Yoshida, an officer in the Imperial Japanese Armed Forces, for the alleged offenses indicated in the attached Charge.

2. The trial is to be held in the city of Manila, Philippine Islands. The trial shall be conducted in conformity with Regulations Governing the Trials of Accused War Criminals, dated 5 December 1945, General Headquarters, Supreme Commander for the Allied Powers.

3. The record of trial including judgment or sentence and the action of the appointing authority will be forwarded to this headquarters. Unless otherwise directed, the execution of any death sentence will be withheld pending the action of the Supreme Commander for the Allied Powers.

FOR THE SUPREME COMMANDER:

/s/ Harold Fair
/t/ HAROLD FAIR
Lt. Col., AGD
Asst. Adjutant General

1 Incl:
Chg vs Takujira Yoshida.

CERTIFIED TRUE COPY

Douglas Mallin 2d Lt AUS

U. S. A. vs TAKUJIRO YOSHIDA ~~ET AL~~
PROSECUTION
~~DEFENSE~~
COMMISSION EXHIBIT NO. 2
RECEIVED 25 May 46

BASIC Ltr, CINC, SCAP, file 000.5 (27 Mar 46) LS dated 27 Mar 46
subj: "Trial of Tsingjiro Tochida."

AG 000.5 (27 Mar 46) LS 1st Ind.

General Headquarters, United States Army Forces, Pacific,
APO 500, 27 March 1946.

TO: Commanding General, United States Army Forces, Western Pacific,
APO 707.

1. Pursuant to basic communication you are hereby directed to appoint a Military Commission for the trial of the following named officer in the Imperial Japanese Armed Forces:

Tsingjiro Tochida

2. All records of trial including judgment or sentence and the action of the appointing authority will be forwarded to this headquarters. Unless otherwise directed, the execution of any death sentence will be withheld pending the action of the Supreme Commander for the Allied Powers.

3. The following named officers, assigned to the War Crimes Investigating Detachment, this headquarters, are made available to your command for service as prosecution personnel on the Military Commission to be convened by you for this purpose:

Lt Comdr Frank L. Didier, USNR, Chief Prosecutor
2d Lt Frank J. Eberharter, INF, Asst. Prosecutor

By command of General MacARTHUR:

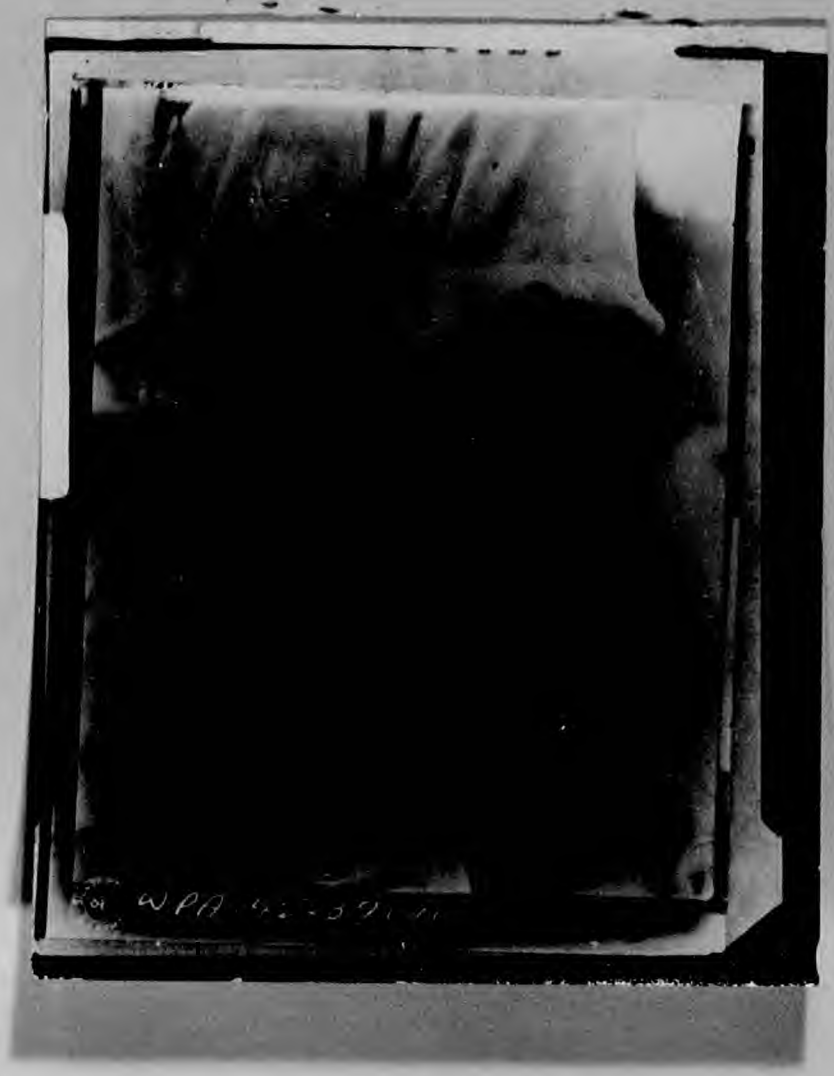
/s/ Harold Fair
/t/ HAROLD FAIR
Lt. Col., AGD
Asst. Adjutant General

1 Incl:
Chg as indicated

CERTIFIED TRUE COPY

Douglas Collins 2d Lt Inf.

WPA-45-37011



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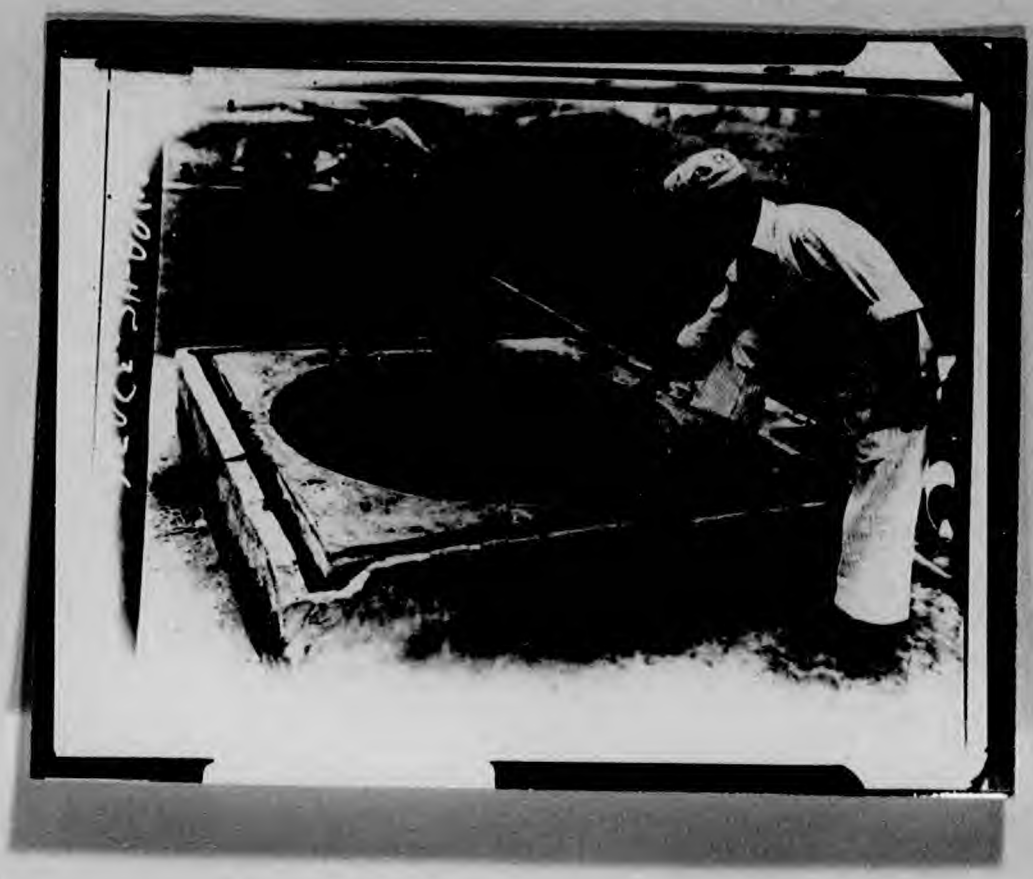

昭和21年 3月 6日

陸軍軍曹 城戸メ吉 30才

結婚 済ミ

福岡縣山門郡両開村大字西開 152番地

昭和18年 12月 6日ヨリ 昭和17年 3月 19日マデ

昭和17年 8月 7日ヨリ 昭和20年 9月 10日マデ

吉田大尉ノ部下

昭和20年 3月 「パダヤ」ニ海岸守備隊トシテ駐屯

昭和20年 5月 マデ

昭和20年 5月ヨリ 同年 6月 17日マデ「ブゲイ」ニ海岸守備隊トシテ駐屯ス.

昭和20年 3月頃「ダラヤソール」ヨリ女3名「パダヤ」ニ連テ行キ3日ノ後女3名ハ「ダラヤソール」ニ帰ル.

エバハート少尉ヨリ寫眞ヲ見セラレ始メテ女3名殺サレタ事ヲ知ル.

今田軍医大尉ガ此ノ女3名ノ中「ウガレ」ト以前ヨリ交際シテ居タ事ヲ聞イテ居タノデ此ノ女3名ガ殺サレタ事ハ今田軍医大尉ガ何カ関係ガアルタラウト思ハレル.

「ダラヤソール」ヨリ連レテ行ッタ女ハ上記ウガレ外2名デアッタ

昭和20年 5月下旬「ブゲイ」ニ於テ吉田大尉 住民9名捕ハ國武軍曹以下10名位ニ刺殺ヲ命ジタ. 刺殺ノ中途9名ノ内2名逃ゲ去レタ処ヲ歩哨ノ田川重範ガ誰何シタルタ應答モナク歩哨線ヲ逃ゲ去ラントシタノデ田川重範ガ発砲シ2名ノ内1名ヲ射殺シ他ノ1名逃ゲ去ル.

上記9名ノ内7名ハ殺シテ井戸ノ中ニ入レ「トタン」ヤ石等ヲ死体ノ上ニ乗セタ事ヲ報告シテ居タ. 吉田大尉ニ報告シテ居タ.

刺殺ノ場所迄連行スル際両手ヲ縛縄デシバッテ逃ゲラレナイ様ニシタ. 刺殺サレタ9名ト外2名ハ刺殺サレタ~~縄前ニ縛ラレテ~~

前ノ晩 真夜中頃 捕ヘラレ 夜明頃 刺殺サル.

私ハ当日衛兵勤務ニ服シテ居タノデ刺殺ノ現場ニモ行カズ 刺殺ニ参加モシナイ. 吉田大尉カ刺殺ヲ命ジタ事及ビ國武軍曹ガ刺殺ノ状況ヲ報告シタ事ハ聞イタ.

上記事件ニ関シテハ軍法會議モ特別ナル裁判モナカッタ.

此ノ証言ハ私ノ知ル範囲ニ於テ事實デアル事ヲ宣誓シマス. 此ノ訊問ニ際シテハ脅威モ約束モナク自発的ニ証言ス

陸軍軍曹 城戸メ吉

(KI DO SHIME KICHI)

11

2A

6 March 1946
Army Sergeant: KIDO, Shinichi, Age: 20 Married.
Palauan Zoo, Yamato Gun, Ryukyu Shoto Ocean, Nishihirabi 9132

From 6 December 1945 to 10 March 1946
From 7 August 1944 to 10 September 1945
Subordinate of Captain YOSHIDA.

March 1945—Stationed at "ZAMAZA" as a coastal guard unit.
Until May 1945

May 1945 until 10 June of the same year, stationed at "KUMUT" as a coastal guard unit.

About March 1945 took 3 girls from "BALAYA SUR" to "ZAMAZA." After 3 days, only the 3 girls were took to "BALAYA SUR."

Learned for the first time that the 3 girls were killed after the pictures were shown by Lt. Shoemaker.

I had heard that Medical Officer, Captain ZHABA was formerly well acquainted with "UBALD" one of the three girls, so I should think that Medical Officer, Captain ZHABA, has some kind of connection with the killing of the 3 girls.

The girls taken from "BALAYA SUR" were the above mentioned UBALD and two other girls.

Towards the end of May 1945, Captain YOSHIDA captured 9 civilians at "KUMUT" and ordered Sgt. ZHIRAKI and about 10 of his men to bayonet them. In the midst of bayonetting them, 2 of the 9 civilians began to escape. During their escape, Sentry ZAGAWA, Shigemori challenged them but there was no answer and they tried to cross the Sentry line at ZAGAWA, Shigemori fired at them and killed one of the two but the other escaped.
It was reported to Captain YOSHIDA that 7 of the above mentioned 9 were killed and thrown in the well. That the cadavers were covered with galvanized iron and stones.

During the time they were taken to the place where they were to be bayonetted to death, their hands were tied with a rope so that they could not escape. The 7 who were bayonetted and the other two were seized in the middle of the night before the bayonetting, and were bayonetted to death about dawn.

I was on guard duty at that time and I didn't go to the place of bayonetting nor did I participate in the bayonetting. I heard Captain YOSHIDA ordering the bayonetting and

U.S.A. vs
Prosecution TOKUJIRO YOSHIDA
Defense
Exhibit No. 10-A
Received: 25 May 46

Sgt. KUNITAKE reporting on the state of the bayonetting.

In regards to the above mentioned incident, there were no Court Martials nor any special trial.

I swear that this testimony is true to the best of my knowledge. There were no threats or promises during this inquiry and I testify that it was done voluntarily.

Army Sgt. KIDO, Shinchichi

COMMONWEALTH OF THE PHILIPPINES)
) ss
CITY OF MANILA)

I, Noel TSUNEMI, T/5, ASN 37326040, being duly sworn on oath, state that the attached statement is a true and complete translation from Japanese to English of the statement written by Japanese Army Sergeant Shinchichi KIDO in my presence and in the presence of Frank J. HEMMANSEN, 2d Lt., Inf., U.S.A.

/s/ Noel Tsunemi
T/5 NOEL TSUNEMI.

Subscribed and sworn to before me this 5th day of March, 1946.

/s/ Nicholas Fishman
Capt JAGD

BEFORE THE
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	}	
vs	}	PUBLIC TRIAL
TOKUJIRO YOSHIDA	}	

VOLUME IX

Pages 89 to 117

MANILA, P. I.

DATE: 27 May 1946

COPY NO.: 4

CERTIFICATION

THIS CERTIFIES that this volume is a part of the proceedings of the Military Commission appointed by Paragraph 22, Special Orders No. 118, Headquarters, United States Army Forces Western Pacific, dated 23 May 1946, in the trial of the case of the United States of America v. Tokujiro Yoshida.

Dated 3 June 1946.

Archibald L. Parmelee

ARCHIBALD L. PARMELEE
Colonel, CAC
President of Commission

BEFORE THE
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA

vs

TOKUJIRO YOSHIDA

PUBLIC TRIAL

Court No. 1
High Commissioner's Residence
Manila, P. I.
27 May 1946

Met, pursuant to adjournment, at 0840 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL ARCHIBALD L. PARMELEE, CAC, President
COLONEL BERNARD E. CONWAY, CAC, Law Member
LT. COLONEL STARLEY N. BOYKIN, JR., INF
LT. COLONEL RAFAEL A. MONSERRAT, JAGS (PA)
CAPTAIN GLENN W. HENDRICKS, FA

APPEARANCES:

FOR THE PROSECUTION:

2ND LIEUTENANT FRANK J. EBERHARTER, INF, Prosecutor

FOR THE DEFENSE:

1ST LIEUTENANT JOHN J. BERRY, TC, Chief Defense Counsel
1ST LIEUTENANT EVERETT W. THODE, INF., Assistant Defense Counsel

OFFICIAL INTERPRETERS FOR THE COMMISSION:

NARCISO ALBANO, ANGELO CELIS — ILOCANO

PRISCILA AGUAS, REBECCA MINER — PANGASINAN

T/SGT ROY KATO, T/3 GEORGE BABA, T/3 YOSHIYUKI MOTOYOSHI — JAPANESE

OFFICIAL REPORTERS FOR THE COMMISSION:

ARNOLD COHEN
WILLIAM COHEN

I N D E X

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P R O C E E D I N G S

The Commission convened, pursuant to adjournment, at 0840 hours, 27 May 1946, in Court No. 1, High Commissioner's Residence, Manila, P. I.

COLONEL PARMELEE: The Commission is in session.

LIEUTENANT EBERHARTER: All members of the Commission are present; the accused, counsel for the defense, and counsel for the prosecution are all present.

TOKUJIRO YOSHIDA

a witness in his own behalf, having been previously duly sworn, testified as follows, through Interpreters Baba, Kato, and Motoyoshi:

LIEUTENANT EBERHARTER: You understand that since the recess Saturday afternoon you are still under oath to tell the truth, the whole truth, and nothing but the truth. So help you God.

THE ACCUSED: Yes.

REDIRECT EXAMINATION

BY LIEUTENANT BERRY:

Q Who was Lieutenant Miwa?

A Yes, I knew First Lieutenant Miwa.

Q Who was he; what was his command, if he had any?

A He was unit commander of coastal observation.

Q Did you ever have any command-function relationship with him?

A We had no command relationship. Lieutenant Miwa was an officer of the Ichinose Battalion, whereas I was an officer in the Arizono Battalion.

Q Were you with him at any time on the night of the 23rd of May 1945?

A No.

Q What was the condition of the Municipal Building in Buguey at that time?

A When do you mean?

Q On the 23d of May.

A Due to a big fire which occurred in March, the vicinity around there was all burned down.

Q How many men were in your platoon?

A I was the only officer, and there were twelve men.

Q What was their duty?

A They were members of the coastal-observation platoon, and they were observers, look-outs.

Q Did you ever have any occasion to wear a belt across the front of your uniform?

A You mean diagonally?

Q Yes.

A No. And I did not have any.

Q Where were you on the night of the 23d? What was your post or duty?

A You mean me?

Q Yes.

A I was in the billeting area in Buguey Leror, which is about two and a half kilometers from the Municipal Building of Buguey.

Q In regard to the first three witnesses that you saw here the other day, I believe that you testified you saw Corporal Matsumoto with nine men. Have you seen any of those three people since the night of the 23d of May, and under what conditions, if you have?

LIEUTENANT MEERHARTER: If counsel please, I don't believe the accused ever stated that he saw those men on the 23d of May.

Q The three witnesses who testified the other day for the prosecution -- have you ever seen them before and, if so, under what circumstances?

A The first time I saw them was a few days before this trial began. On the 20th of May, I believe, one of the civilians came into the stockade here at the High Commissioner's Residence, and on the 23d one came. They came with the prosecutor, I believe, to identify me. However, none could definitely point me out as Captain Yoshida. But after some conversation with the prosecutor, one of them seemed to have said that I might be Captain Yoshida. None of them were positive of the identification. The other two did not identify me.

Q Did you on the night of May 23, 1945, have any authority to order Corporal Matsumoto to do anything?

A No, I did not have the authority. The reason for this is that we were from different platoons. He, Corporal Matsumoto, operated under orders from the Akasaka company commander, which was located in Pattao, about five kilometers south of Buguey. For these two reasons I was not his commander, nor did I have any authority to order him.

LIEUTENANT BERRY: That's all. Your witness.

RECROSS EXAMINATION

BY LIEUTENANT EBERHARTER:

Q How many men did you have directly under your command, Captain?

A Eleven men under me.

Q Was Sergeant Kido under your command?

A Schimekichi Kido?

Q That's right.

A Yes, he was my subordinate.

Q Sergeant Yoshio Kunitake -- was he under your command?

A He was my subordinate.

Q Is there a private by the name of Shigenori Tagawa under your command?

A Shigenori Tagawa, who was a leading private, I believe, was under my command.

Q This Corporal Matsumoto -- was he part of the Arizono Butai?

A Yes.

Q And Lieutenant Miwa, whom we have heard mentioned several times here -- he was part of the Ichinose Butai; is that correct?

A Yes.

Q You were part of the Arizono Butai, is that correct?

A Yes.

Q You mentioned you first saw the witnesses that testified here Saturday morning some few days before the trial started, and you said there was some conversation between myself and those witnesses at the time they were identifying you. Could you tell us what that conversation was?

A I could not really hear them, but all I could hear was some mumbling. However, during the mumbling he glanced at me and talked and then glanced at me. To me it seemed that the prosecutor was suggesting or helping the civilian out in identifying me.

Q You didn't hear clearly what was said, is that correct? It would help us a lot if you would tell us about the conversation there.

A I could not hear the conversation clearly; however, from their actions it seemed that way to me.

Q How many men were lined up with you, Captain?

A I don't remember the exact number, but I believe perhaps five or six.

Q Was there anybody else present there besides the five or six Japanese, yourself, myself, and one witness at a time? Was there anybody else there?

A A guard was present.

Q Do you remember that guard's name?

A No, I do not know the guard's name. Moreover, behind us was the cells, and there were some men in them, I believe.

Q Yes, that's correct. You stated that you could not give Corporal Matsumoto any order because he wasn't in your platoon. He was in the same company you belonged to, was he not?

A Yes, the company is the same. However, even though we were in the same company, because we were in different platoons, I had no authority to order him. Besides that, he had direct orders from the company commander, so how could I have ordered him?

Q You say he had direct orders from the company commander. What were those orders?

A That order was to scout the situation and vicinity of the lower regions of the Buguey river. That order Matsumoto received from the company commander.

Q Did you have any reason to believe that these civilians were going to be taken out and bayoneted to death?

A From whom?

LIEUTENANT EBERHARTER: I'll withdraw the question. No further questions.

COLONEL PARMELEE: Questions by the Commission?

BY COLONEL CONWAY:

Q I am now referring to these same nine civilians. Who would normally decide what was to be done with such persons?

A The person who ordered Corporal Matsumoto to go out on a reconnaissance would normally take action.

Q Who was he in this case?

A Captain Akasaka.

Q Describe the uniform you generally wore during the month of May 1945.

A I wore a shirt like the one I have on now, and short trousers. The color of the shirt was green, and the color of the trousers was something like this brief case (pointing).

COLONEL CONWAY: Let the record show that the brief case referred to is OD canvas.

A (Continued) For headgear I wore a cap with a complete sun vizor all the way around, and other times I wore a sun vizor only in front. For footwear I wore shoes like these I have on now.

INTERPRETER BABA: "Tabi" -- that's a Japanese word, sort of a cloth sock with --

COLONEL CONWAY: Separate compartment?

INTERPRETER BABA: For toe only.

A (Continued) There was a time when I wore leather leggings; then other times leggings which were wrapped around my legs. And at times I did not wear either. As for a belt, similar to the one worn by the M.P.'s here -- I never had an occasion

to wear one.

Q Did you ever wear civilian clothes?

A No.

Q What arms did you generally carry?

A In the billeting area I did not wear any, but outside there there is time when I wore a pistol or sword. There were times when I did not wear any.

Q Did you associate with the citizens of Buguey to any extent?

A I was in Buguey only a short while, but there were some civilians with whom I made friends.

Q Would these people have any difficulty in recognizing you?

A Yes, they can.

Q They can what? They can have difficulty or they can recognize?

A They can recognize me easily.

BY COLONEL BOYKIN:

Q Do you know the location of the well, which has been referred to in the testimony here, where the bodies were found?

A No, I do not know.

Q At what time and where did you see Corporal Matsumoto on the night of May 23 in the company with nine prisoners?

A I am not definite about the date May 23. However, at the time I saw Corporal Matsumoto with the nine men -- the time was about eleven or twelve o'clock p. m. and the place was in a billeting area in front of my barracks.

Q How long was Corporal Matsumoto with you at that time?

A It was just a short while, maybe three to five minutes.

Q Where is Corporal Matsumoto now?

A When we came out from the hills, the officers, non-commissioned officers and men were separated so I do not know where they are.

Q Were there any civilians in Buguey at the time you were there in May of 1945?

A I did not see any.

BY COLONEL MONSERRAT:

Q When you saw Corporal Matsumoto with those nine civilians, did you hear any shots fired on that occasion?

A No.

Q You stated on direct examination that you ordered your men to treat the civilians of Buguey with consideration, make friends with them.

LIEUTENANT BERRY: May I interrupt at this moment. I don't believe he stated that.

COLONEL PARMELEE: The question is withdrawn. Has the defense any questions to ask, based upon what was brought out by the Commission?

LIEUTENANT BERRY: No, sir.

LIEUTENANT EBERHARTER: Just one question, sir.

BY LIEUTENANT EBERHARTER:

Q Do you wear glasses or did you ever wear glasses?

A Yes, I use glasses.

Q What kind of glasses?

A Rim glasses.

Q Horn rim glasses?

A I don't know what material the rim was made of, but

something like celluloid and speckle covered.

BY COLONEL PARMELEE:

Q It looks something like tortoise shell?

A I don't think it was tortoise shell.

BY LIEUTENANT EBERHARTER:

Q Are those your glasses, Capta... (showing photograph to witness)?

A Yes. In the picture it is shown black, but actually it is not black.

LIEUTENANT EBERHARTER: No further questions.

COLONEL PARMELEE: I take it there are no further questions of the witness at this time, is that correct? Apparently so. The witness is excused.

(Witness excused.)

LIEUTENANT BERRY: The defense has no further witnesses. The defense rests.

LIEUTENANT EBERHARTER: The prosecution asks at this time that we take approximately fifteen minutes' recess in order that I can locate the guard that was on duty at the time that the witnesses went to the High Commissioner's Stockade to identify the accused.

COLONEL PARMELEE: The Commission will recess at this time and will reconvene when the prosecutor informs the Commission that he is ready to proceed.

(Short recess.)

COLONEL PARMELEE: The Commission is in session.

LIEUTENANT EBERHARTER: All members of the Commission are present, the accused, counsel for the defense, and counsel for the prosecution are all present.

Prosecution calls as its first rebuttal witness Pfc. Jung.

OLIVER W. JUNG

a rebuttal witness for the prosecution, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY LIEUTENANT EBERHARTER:

Q Will you state your name, rank, and serial number, please?

A Private First Class Oliver W. Jung, 33991145.

Q What are your duties?

A Acting Desk Sergeant of Stockade.

Q Were you on duty the afternoon of May 21, 1946?

A I was, sir.

Q Were you on duty and present at the time I and a Filipino civilian came to identify one of the accused that was held in the stockade?

A I was, sir.

Q What did I have you do in regard to a line-up with the accused?

A You had me take the defendant and three other ones to be identified.

Q And how did I ask for the defendant -- by name or number?

A By cell number, sir.

Q Was the Filipino civilian present at that time when you arranged the line-up then?

A He was not.

Q And when you were ready I brought in the witness, is that correct?

A That's right, sir.

Q Was there any conversation between yourself and myself at that time?

A No, there wasn't.

Q Do you remember whether I asked you if the defendant was there?

A Yes, sir, I do.

Q Do you remember the exact words I used?

A Yes, you asked me if the defendant was there, was he the correct one?

Q As a matter of fact, didn't I tell you there must be some mistake, the defendant was not there?

A You did, sir.

Q And then did I ask you to check your roster again and see whether your roster and No. 45 of that name would check with the one you had over at your desk?

A You did, sir, and I checked.

Q And during that conversation -- or at what time did the witness point to the accused that he was supposed to identify, that he was attempting to identify?

A At what time? I don't get you.

Q Do you remember whether the witness stated at that time, "I think that's Yoshida but I'm not quite sure"?

A Yes, sir, he did.

Q Did I give any indication whatsoever to the witness indicating which one of the men, if any one of them, was Yoshida?

A No, sir, you did not give any indication.

Q After he pointed to Yoshida he went down the rest of the line and did he identify anybody else?

A No, he didn't recognize anyone else.

Q After the witness left the stockade did I ask you to check and be sure that that was Yoshida?

A Yes, sir, I did. I called his name and he answered. He was in the line-up.

Q You called his name and he answered, "Yoshida."

A He answered, "Here."

Q Then did you call the first name?

A Yes, sir, I did.

Q And do you remember any remark that I made at that time?

A You made the remark -- you made a remark that he had you fooled, that he hadn't had his glasses on.

Q And then did we bring in another Filipino civilian to attempt to pick the accused out of the line-up?

A Yes, sir, we did.

Q And did that witness pick the accused?

A He did, sir.

Q Did he identify any other individuals in the line-up?

A No, sir, he didn't.

Q Did I give him any indication whatsoever who in the line-up was the accused?

A No, sir, you didn't.

LIEUTENANT EBERHARTER: No further questions.

COLONEL PARMELEE: Cross-examination?

LIEUTENANT BERRY: No, sir.

COLONEL PARMELEE: Questions by the Commission? There appear to be none. The witness is excused.

(Witness excused.)

LIEUTENANT EBERHARTER: No further rebuttal witnesses, sir.

LIEUTENANT BERRY: The defense has no rebuttal witnesses.

COLONEL PARMELEE: At this time the Commission would like to have the prosecutor and the defense counsel come up here. There are two questions the Commission would like answered here.

(Paper handed to prosecutor and defense counsel.)

Take time out to read the questions over and discuss them if you desire.

LIEUTENANT EBERHARTER: Sir, in answer to the last

question, "How much time" -- sir, is this on the record or off the record?

COLONEL PARMELEE: This is on the record.

LIEUTENANT EBERHARTER: All right, sir. In answer to the question, "How much time elapsed between the time the prisoners were before the accused and the execution?" the witnesses testified, the first two witnesses that were taken out separately testified they were at the headquarters in Buguey approximately five minutes and then were marched away toward the Municipal Building in the vicinity of the well -- and evidently they were disposed of immediately. Now, as to the other witnesses, I believe it was stated by the witness Jacinto Alonzo that he was held, he said, thirty minutes longer than the other two witnesses, and then they were marched from the headquarters over to the well near the Municipal Building. Now, he said they were tied at that time but he did not say as to any lapse of time. The only other time element we have on it is the testimony of Sergeant Kido, who said that it was around midnight that the prisoners were in the headquarters and it was around dawn that the execution was to have taken place.

LIEUTENANT BERRY: Captain Yoshida testified that he saw them around midnight when they passed by his barracks area.

COLONEL PARMELEE: I will ask the member submitting that question, have you sufficient recollection now of the testimony to satisfy yourself as to this matter?

COLONEL BOYKIN: Yes, sir, I think so.

LIEUTENANT EBERHARTER: Now, as to the question,

"Where is the well located in which the bodies were found with respect to the place where the accused saw the corporal and nine prisoners?" the well is located in what would be the front yard of the Municipal Building. The Municipal Building was destroyed at that time and that is where, evidently, the corrugated iron or tin was secured to cover the well. It's in a northeasterly direction -- correction: it's in a northwesterly direction from the Municipal Building. The garrison is in Buguey, what is technically known as Leron which is quite some distance from the Municipal Building. This town of Buguey is along the seacoast of Northern Luzon by the Babuyan Channel. It spreads out a considerable distance along that seacoast and, of course, they have various little barrios. It is all part of Buguey. I would say, to the best of my memory, it is about six kilometers in length, that is, Buguey and the various little barrios that have been mentioned.

COLONEL PARMELEE: I will ask the member submitting the question if he is satisfied now or has the information that he desired from this refreshing of testimony.

COLONEL BOYKIN: I am satisfied.

COLONEL PARMELEE: The member asks as to whether the defense and prosecution would stipulate the distance that the well was from the garrison; the distance from the garrison that the well was located.

LIEUTENANT EBERHARTER: If that is agreeable with the defense counsel, I will stipulate that the distance is two-and-a-half kilometers from the headquarters or billeting area, as the accused called it, to the well located in the

yard of the Municipal Building in Centro Buguey.

COLONEL PARMELEE: The law member will rule on that stipulation.

COLONEL CONWAY: Is the accused willing to agree to that statement?

LIEUTENANT BERRY: Yes.

COLONEL CONWAY: Then the stipulation will be accepted.

COLONEL PARMELEE: Let the record show that this review of the testimony by the prosecutor to answer questions submitted by the Commission was overheard and concurred in by the defense counsel; is that correct?

LIEUTENANT BERRY: Yes, sir.

COLONEL PARMELEE: The Commission does not desire to call any witnesses. Is the defense prepared to make its closing argument?

LIEUTENANT BERRY: Yes, sir.

COLONEL PARMELEE: And will the prosecution be prepared to follow with its closing argument?

LIEUTENANT EBERHARTER: Yes, sir.

COLONEL PARMELEE: The defense will make his closing argument.

ARGUMENT FOR THE DEFENSE

LIEUTENANT BERRY: May it please the Commission, this Military Commission being composed of officers of some years' experience is presumably capable of judgments superior to that of an ordinary jury. I will therefore make alternative arguments: one based on the facts as shown, the other based on the legal sufficiency of assumed facts. I will discuss the latter first.

I believe that we are aware of the conditions that prevailed in Northern Luzon in the early winter of 1945. The United States Army had occupied Manila and we were beginning to pin in the Japanese forces in the interior. Apparently, from their own tactics, they anticipated that at any moment there would be a landing on the northern coast, where the scene of this alleged crime is supposed to have taken place. They had, therefore, divided off their coastal defenses, much as we might have done under similar circumstances, by placing look-outs along the beach under various junior officers, drawing their main forces well into the rear for deployment in the event of an attack and, from the testimony of the prosecution witnesses themselves, endeavor to clear all of the civilians out of the area.

These civilians were ordered out by a general order of a general plan as a general policy of the defending forces. There has been testimony that there was serious guerrilla activity on the part of the unit known as the Bolo Unit. The accused himself has testified that they were hampered by Filipinos who were throwing up flares and in other ways indicating positions to the American airplanes that

were bombing them, and to ships that were to come in from the sea and attack them.

Now, under the general situation as it is briefly indicated there, we have the general policy of the treatment of noncombatant civilians. They endeavored to get them all out of the area. They were hampered somewhat by guerrilla activity. Under the Rules of Land Warfare these civilians, if they came back into the area and were captured, were subject to trial. With the imminence of attack and in a period of retreat it may be questionable whether or not a trial could have been effected. There is a great difference between a force advancing and taking civilian persons who have been inimical to their cause and treating with them. Granted, having covered and occupied the territory, they can try them at their leisure. But under these circumstances where, as the captain has testified, his unit was pulled from the beach at Paddaya and moved across to Buguey and was moving back, as they subsequently did, into the hills, and in view of the other units -- Lieutenant Miwa and all the others referred to -- the difficulty of trial is well imaginable. In moving back, having to face the enemy frontally, with civilians harassing and hampering from the rear and right in the combat area, there arises a question as to whether any junior officer would be able to enforce the general policy with strict adherence to the Rules of Land Warfare requiring a trial.

This is all supposition, gentlemen, because the accused at no time indicated that he had anything to do with the

execution of anyone there or the wounding of anyone in the attempted execution. But it is an alternative defense that even if he had any way to stop it, prevent it, order it, or cause it, that in his judgment as a junior officer, under those circumstances, it may well be that for the safety of his own troops and his own position he found it necessary to do so, he or any other officer there.

Granting that the persons who were killed and the persons who were wounded, in the eyes of the American Army, are heroes -- there is no question about that -- the point remains distinctly this: whether in a reverse position we could consider it a violation of the general policy of Rules of Land Warfare to act as it has been alleged in the Charge and Specifications.

Now I will take the other argument based on the facts alone and without the assumptions that they raise. In the American judicial system there is one inviolate precept: that a man is presumed innocent; that in order to find him guilty it has to be done so beyond a reasonable doubt. There cannot but remain in the minds of the Commission a reasonable doubt as to the guilt or innocence of Captain Yoshida; and if there does remain a reasonable doubt, you must find for the accused.

As far as the proof of the alleged crime is concerned, we have had the three witnesses who demonstrated their wounds by bayonet. We have had the testimony as to the other individuals who were left in the well, presumably dead as far as the proof, the corpus delicti, is concerned. We did not have the bodies here; but whether or not that is an

essential element will have to remain with the Commission.

As far as we are concerned, the essential element in the Charge and Specifications here raising a reasonable doubt as to the guilt of the accused is the fact that he has never been clearly identified. One witness said in his testimony that he saw Captain Yoshida's face because of the moonlight. Yet he further contradicted himself in his testimony by saying that it was raining and that there were clouds that night and he was unable to identify any of the others in the party. It was the same witness who testified that he recognized the accused because he had a belt across his shirt. Yet the accused has testified that his uniform did not consist of a belt. That was the only clear marking that the witness had in mind -- his belt. None of the other witnesses were able to associate Captain Yoshida generally with the area of Buguey. It has been testified that he had been in Paddaya for some months with his group of men who were stationed along the beaches watching for ships. He testified that he had no difficulty with the civilian population there; that although the general order was that they should be removed, that when some of them drifted back for food he did not do them any harm; nor have we any reason to believe that he did, because if he had, it is a fair presumption that it might have been included in the general investigation of the case of Captain Yoshida. When he went back down to Buguey he was doing the same duty. He was in no way associated with the group that garrisoned the town. Their headquarters was some distance removed from the position

from which he operated.

As he testified, Corporal Matsumoto had the detail in charge of the Filipinos who were later killed or wounded. Corporal Matsumoto was responsible to and received his orders from him, the garrison commander, Captain Akasaka.

The apparent picture is that Captain Yoshida was present in the town or in the area of the town that night; that he saw Corporal Matsumoto coming by with these civilians, and in normal curiosity he questioned him as to where he was going, what he was going to do, and the corporal told him and took off with them. One of the witnesses testified for the prosecution that he heard the captain order the deaths. Yet he stated he did not understand Japanese, did not speak it, but he thought it from the conversation. Now, it could easily be true that this individual was referring to the conversation that took place between the captain and the corporal at the place where the captain saw the corporal with the men -- the one and only time he saw them -- and construed it to be an order -- since one was a superior officer and the other a noncommissioned officer -- to be an order for their disposition, not being able to speak the language.

The testimony of the last prosecution witness of the group of Filipinos was obviously rather weak, even under direct examination: his ability to clearly identify, his ability to remember clearly exactly what took place. But that is quite understandable under the circumstances. The Filipino witness went through some rather harassing experiences that night. He could not be expected to remember every item, even important items, with a great deal of clarity.

In regard to the identification in the stockade here, the M.P. present with the prosecutor stated that he heard the witness say, "I think that's Yoshida but I'm not sure." Again, the identification is not too strong and it is quite understandable since he only saw the man once before, the only time apparently.

If we are to believe the testimony of the accused that his general duties would bring him in no way in contact with police duty in that area to the extent where he was to bring in guerrillas or combat guerrillas for guerrilla activities or sabotage, or anything else of that nature, I think the presumption is fair that he would have no more than a normal curiosity as to what was going on when he saw Corporal Matsumoto; and when Corporal Matsumoto satisfied him as to the fact that he was taking them up to the Municipal Building, or to his commanding officer, that he would make no further inquiry. The division of the command function, I think, is rather clear from the testimony. It would be a rather difficult situation if an officer who was a bystander, through his own curiosity in such a matter, were to eventually lose his life.

I think then, gentlemen, that there is only one rule to be satisfied: that of your own conscience. There is nothing governing the judgment of the facts in this case but your own conscience. I maintain that under the facts presented there is more than a reasonable doubt as to the guilt of Captain Yoshida.

Thank you.

ARGUMENT FOR THE PROSECUTION

LIEUTENANT EBERHARTER: May it please the Commission, defense counsel has pointed out that we did not have present here in the courtroom before the Commission the bodies of the men who were killed and thrown in the well. Defense counsel then makes reference to the corpus delicti. We all know that corpus delicti does not mean the corpus, the body. Corpus delicti simply means that you are to prove the facts of your case. And what did we have here? We have the witness who appeared last on the stand, Jacinto Alonzo--who was bayoneted three times along with his companions and thrown in the well--testify that some two or three hours afterwards he was able to escape; that before he escaped he had heard one of his companions screaming; the others did not scream; at the time he escaped that companion had ceased screaming; and he said they were dead. I will accept that there was some question whether that one was still dead or not. In answer to a question put by the Commission, he named the individuals that were dead. That, gentlemen, is enough to satisfy the corpus delicti in any court.

As to the identification of Captain Yoshida: there was only one witness here questioned at all on cross-examination by the defense as to the identification of Yoshida: Jacinto Alonzo. You will remember that he was quite shaky on the stand. He was the man that was bayoneted three times and thrown in the well. It was necessary that we take several recesses in order to calm him down. It is true that he did say that he could not recognize the man

that bayoneted him because it was rainy and cloudy that night. He further said that it was also rainy and cloudy when he saw Yoshida. But, gentlemen, where did he see Yoshida? He saw him in the garrison headquarters where he testified there was a light on. At that time he did not know he was going to be bayoneted nor who was going to bayonet him. There were twelve Japanese soldiers there. When he was bayoneted it was two-and-a-half kilometers away from this headquarters at the well by the Municipal Building. Naturally, he could not identify the man that bayoneted him.

You will recall that the other witnesses all identified and said that they recognized Lieutenant Yoshida at the house where they were sleeping when they were picked up. One of the witnesses testified that he had known Yoshida before because he had seen him in Paddaya. Paddaya is a little town not too far distant removed from Buguey. It is more reasonable that you will recognize a man that you have seen before and be able to pick him out later on sometime than to pick out a man that you saw only that one time.

Gentlemen, I am not going to take time to review the Charge and Specifications. There are only two of them growing out of this incident. The three men as alleged in the Specifications were wounded. You have all seen them in court. We have introduced exhibits and we have had testimony as to the others that were thrown in the well. Let us instead review some of the statements made by the accused Tokujiro Yoshida.

The accused now admits that he was in Buguey that night. He admits further that he saw the prisoners, but he

says they were in charge of Corporal Matsumoto; that he had a little conversation with Corporal Matsumoto; that then he doesn't know what happened to the prisoners from then on. Whereas our three witnesses say after they were taken to the headquarters, Lieutenant Yoshida was there; that there was some conversation in Japanese. They do not understand Japanese; they do not know what was said there; but they do know that immediately thereafter they were taken out to the well by the Municipal Building and bayoneted.

There has been considerable talk about guerrilla activity, and the fact that the accused was not a garrison commander there and would have nothing to do with guerrilla activity. The accused, as he states himself, was in charge of a coastal patrol unit. He had sentries and guards in it. And yet when we ask him, "Did you ever know or hear of any guerrilla activity in Paddaya?" the answer was "No." "Did you ever know or hear of any guerrilla activity in Bugucy?" The answer again is "No." Are we to believe what was hinted at by the accused on direct examination: that this Corporal Matsumoto went out on his own accord and bayoneted these men? Are we to believe that Corporal Matsumoto, one man, had nine prisoners in tow and could take all nine of them out and bayonet them? It doesn't sound reasonable to me, gentlemen.

Let us go to the subject of the Japanese sergeant, Sergeant Kido, who was directly under the command of Captain Yoshida. He said on the stand that he had heard that Captain Yoshida ordered the bayoneting of these men, which is different from what our Japanese interpreter,

Noel Tsuneishi, testified to in saying that the accused had ordered the bayoneting of these men. It is true there was some question on the interpretation of the Japanese statement written by Sergeant Kido. The very last line of Exhibit 10-A, where it stated, "I heard Captain Yoshida ordering the bayoneting," our Japanese interpreter said was open to two interpretations; and, as a matter of fact, the preferred interpretation would be that he had heard that Captain Yoshida ordered the bayoneting.

For the sake of argument let us disregard the testimony of our Japanese interpreter entirely. Let us refer to that statement further on, right in that same line, where it says, "And Sergeant Kunitake, reporting on the state of the bayoneting." There was no question that he heard that. And we go above a couple of paragraphs in that same statement and he says, "Towards the end of May 1945 Captain Yoshida captured nine civilians at Buguey and ordered Sergeant Kunitake and about ten of his men to bayonet them." Was there any question of the interpretation of that language? None whatsoever.

Let us notice other particulars about Sergeant Kido's statement, gentlemen: how it is on all fours with the testimony of our witnesses here. He says that "Captain Yoshida captured --" That's what our witnesses say. Captain Yoshida and his men came to that house that night when they were sleeping and captured them. He says there were "Nine civilians." You will notice he does not use the word "guerrillas" either. There were nine civilians. He said

Noel Tsuneishi, testified to in saying that the accused had ordered the bayoneting of these men. It is true there was some question on the interpretation of the Japanese statement written by Sergeant Kido. The very last line of Exhibit 10-A, where it stated, "I heard Captain Yoshida ordering the bayoneting," our Japanese interpreter said was open to two interpretations; and, as a matter of fact, the preferred interpretation would be that he had heard that Captain Yoshida ordered the bayoneting.

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there were eleven Japanese. Our witnesses said twelve. That two tried to escape and were fired at, and he understood that one was killed, which was evidently the one that was wounded in the arm. He said that the rest were killed and thrown in the well. The well was covered with galvanized iron and tin, and there were some stones thrown in there. One of our witnesses differs a little from that and instead of saying stones he said there were pieces of wood or timber thrown in along with the galvanized iron.

Further, sir, Sergeant Kido, in answer to a question, "Was there any court-martial or special trial?" says "No, there wasn't any." All our witnesses say there was not only no court-martial or trial; they were not even interrogated. They never asked them any questions at all before they were taken out to be disposed of.

Now, there has been some reference to an order of the Japanese declaring Buguey a combat zone. It was supposed to be to the effect that anyone entering that zone would be treated as guerrillas or war rebels. Gentlemen, does that mean that after the capture of anybody that enters that zone dressed in civilian dress, unarmed -- they were sleeping in a house -- that you can just take them out without asking them any questions, without giving them any trial, without anything of that nature, you can just bayonet them and throw them in the well? Certainly not.

Let us refer briefly to the Rules of Land Warfare as contained in Field Manual 27-10, Chapter 11, "Penalties for Violations of the Laws of War." There are several paragraphs there, the first three or four of which describe

what a war rebel is and what war treason is. And then it is stated in paragraph 351:

"351. Unauthorized belligerents.-- Men and bodies of men, who, without being lawful belligerents as defined in paragraph 9, nevertheless commit hostile acts of any kind, are not entitled to the privilege of combatants. If captured, they have no right to be treated as prisoners of war. They may not, however, after being captured, be summarily put to death or otherwise punished, but may be brought to trial before a military commission or other tribunal, which may sentence them to death or such other punishment as it may consider proper."

And again, paragraph 356:

"356. Right of trial.-- No individual should be punished for an offense against the laws of war unless pursuant to a sentence imposed after trial and conviction by a military court or commission or some other tribunal of competent jurisdiction designated by the belligerent."

Now, we all know that in the case of the Rules of Land Warfare the Japanese walked out of the Geneva Convention and did not sign that. However, in the decision of the United States Supreme Court, In re Yamashita, it is stated:

"Paragraph 10 on the declaration of Potsdam on July 6, 1945, declared that 'Stern justice would be meted out to all war criminals, including those who have visited cruelty upon prisoners.' United States Department of State Bulletin, Volume 13, Number 318, pages 137 to 138. This declaration was

accepted by the Japanese Government by its note of August 10, 1945, United States Department of State Bulletin, Volume 13, Number 320, page 205."

Gentlemen, in this case I can see absolutely no mitigating circumstances and I feel that the facts themselves ask for the death penalty.

Thank you, sir.

COLONEL PARMELEE: The Commission will take a brief recess.

(Short recess.)

COLONEL PARMELEE: The Commission is in session.

LIEUTENANT EBERHARTER: All members of the Commission are present, the accused, counsel for the defense, counsel for the prosecution are all present.

COLONEL PARMELEE: The Commission will now close to consider this case and will reconvene to announce judgment at 1330 hours, 29 May 1946.

(The Commission adjourned at 1030 hours, 27 May 1946.)

BEFORE THE
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
vs.	)	PUBLIC TRIAL
	)	
TOKUJIRO YOSHIDA	)	

VOLUME III

Pages 118 to 119

MANILA, P. I.

DATE: 29 May 1946

COPY NO. 4

CERTIFICATION

THIS CERTIFIES that this volume is a part of the proceedings of the Military Commission appointed by Paragraph 22, Special Orders No. 118, Headquarters, United States Army Forces Western Pacific, dated 23 May 1946, in the trial of the case of the United States of America v. Tokujiro Yoshida.

Dated 3 June 1946.

Archibald L. Parmelee

ARCHIBALD L. PARMELEE
Colonel, CAC
President of Commission

BEFORE THE
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA)
)
vs.) PUBLIC TRIAL
)
TOKUJIRO YOSHIDA)

Court No. 1
High Commissioner's Residence
Manila, P. I.
29 May 1946

Met, pursuant to adjournment, at 1330 hours.

MEMBERS OF MILITARY COMMISSION:

(AS PREVIOUSLY NOTED.)

APPEARANCES:

(AS PREVIOUSLY NOTED.)

OFFICIAL INTERPRETERS FOR THE COMMISSION:

(AS PREVIOUSLY NOTED.)

OFFICIAL REPORTERS FOR THE COMMISSION:

ARNOLD COHEN
WILLIAM COHEN
S. CORNELIA PEVETO

P R O C E E D I N G S

The Commission convened, pursuant to adjournment, at 1330 hours, 29 May 1946, in Court No. 1, High Commissioner's Residence, Manila, P. I.

COLONEL PARMELEE: The Commission is in session.

LIEUTENANT EBERHARTER: All members of the Commission are present; the accused, counsel for the defense, and counsel for the prosecution are present.

Sir, we have a new reporter in this case. It will be necessary to swear her in.

COLONEL PARMELEE: She will be sworn.

(S. Cornelia Peveto was duly sworn as official court reporter.)

COLONEL PARMELEE: The accused, his counsel, personal interpreter if he so desires, and the interpreter for the Commission will stand before the Commission.

(The above mentioned do so.)

Tokujiro Yoshida, this Commission in closed session and upon secret written ballot, two-thirds or more of the members present at the time the vote was taken concurring in each finding, finds you:

Of Specification 1, as amended: Guilty, except the word "three," substituting therefor the word "two"; of the excepted word, Not guilty; of the substituted word, Guilty.

Of Specification 2, as amended: Guilty.

Of the Charge, as amended: Guilty.

Further, this Commission in closed session and upon secret written ballot, two-thirds of the members present at

the time the vote was taken concurring, sentences you to death by hanging.

(The interpreter translated to the accused.)

COLONEL PARMELEE: The military police will take charge of the prisoner.

The Commission adjourns sine die.

(The Commission adjourned sine die at 1340 hours, 29 May 1946.)

AUTHENTICATION OF RECORD

The foregoing 119 pages, contained in Volumes I to III inclusive, together with Prosecution's Exhibits 1 to 10-A inclusive, are hereby certified as the record of the proceedings of the Military Commission appointed by Paragraph 22, Special Orders No. 118, Headquarters, United States Army Forces Western Pacific, dated 23 May 1946, in the trial of the case of the United States of America v. Tokujiro Yoshida.

Dated 3 June 1946.

Archibald L. Parmelee

ARCHIBALD L. PARMELEE
Colonel, CAC
President of Commission

THIS ACKNOWLEDGES that the above-described record was submitted to defense counsel prior to being certified by the President of the Commission.

Everett W. Thode

EVERETT W. THODE
1st Lieutenant, INF
Asst. Defense Counsel

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

GHQ, SCAP, LEGAL SECTION, MANILA BRANCH 205J
(Reporting Office)

File Number P-40 Date of Report 3 January 1947

Title of Case U. S. A. vs. Takeshi KONO

PART A

1. Names and Nationalities of Accused:

Takeshi KONO - Japanese

2. Nature, Place and Date of Offense:

Murder, cruelty and torture, other assaults and mistreatments, at or near Iloilo Province, Capiz Province, Tablas Islands, Romblon Province, Guimaras Island and Negros Oriental Province, Philippine Islands, during the period from September 1943 to May 1944.

3. Names and Nationalities of Victims:

Buenvenido Azuelo	- Filipino	Aurelio Artacho	- Filipino
Domini Bonifacio	- Filipino	Crescencio Tupaz	- Filipino
Felicitas Posadas	- Filipino	Jose Romoaldo	- Filipino
Clemente Posadas	- Filipino	Mrs. Jose Romoaldo	- Filipino
Paulino Borra	- Filipino	Mariano Romoaldo	- Filipino
Basilio Posadas	- Filipino	Deogracias Villaruz	- Filipino
Iniong (FNU)	- Filipino	Nicolas Agotaya	- Filipino
Akaw (FNU)	- Chinese	Jaymo Durin	- Filipino
Jose Capacillo	- Filipino	Juanito Durin	- Filipino
Porfirio Capacillo	- Filipino	Claudio Homicillada	- Filipino

Also 29 identified American and Filipino civilians and 1644 unidentified Filipino civilians and an unascertained number of unidentified Filipino civilians.

4. Probable Place and Date of Trial:

High Commissioner's Residence, Manila, Philippine Islands, 15 April 1946.

PART B

5. Place and Date of Trial:

High Commissioner's Residence, Manila, Philippine Islands.

Arraignment - 15 April 1946.

Trial - 15 April 1946.

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter [illegible] AM-PM 000.5 (20 Jun 46) WDSCA) 21 June 1946.

Rec #7

6. Judgment and Sentence (Relate to Specific Accused)

Takeshi KONO - 1 May 1946, Guilty, death by hanging.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence:

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDGS, The Pentagon, Washington 25, D. D.

25-89621-300

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

[redacted], SCAP, LEGAL SECTION, MANILA BRANCH
(Reporting Office)

Add #1 to 2055

File Number [redacted] Date of Report 7 May 1947

Title of Case U. S. A. vs. Tomoyuki [redacted]

PART A

1. Names and Nationalities of Accused:

2. Nature, Place and Date of Offense:

3. Names and Nationalities of Victims:

4. Probable Place and Date of Trial:

PART B

5. Place and Date of Trial:

WD AGO Form R-5392
21 June 1946

(Over

Incl 3

6. Judgment and Sentence (Relate to Specific Accused):

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused):

Takeshi KONO - 17 June 1946, sentence approved, execution withheld by Lieutenant General W. D. Styer, C. G., AFWESPAC, pending action of Confirming Authority.

8. Action of Confirming Authority (Specify authority and date and relate to specific accused):

Takeshi KONO - 9 July 1946, sentence confirmed and ordered executed by General of the Army, Douglas MacArthur, SCAP, under the supervision of, and at the time and place to be designated by the C. G., AFWESPAC.

9. Date and Place of Execution of Sentence:

Takeshi KONO - 24 April 1947, Laguna Province, Philippine Islands.

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after ference for trial (Part A), at the conclusion of the trial (Part B) and at the pletion of final action in the case (Part C) and transmit by fastest means in plicate at each stage of the proceedings to the Director, Civil Affairs Divisio S, The Pentagon, Washington 25, D. C.

25-89621-300

(205-J)

HEADQUARTERS
PHILIPPINES-RYUKYUS COMMAND

APO 707
15 April 1947

GSJA 000.5

SUBJECT: Execution of War Criminals Takeshi KONO, Hajime FUJII and Koe MIKAMI.

TO : Commander-in-Chief, Far East, APO 500.
(Attn: Theater Judge Advocate)

Japanese war criminals Takeshi KONO, Hajime FUJII and Koe MIKAMI were each executed on 24 April 1947, pursuant to AFPAC Military Commission Orders number 25, dated 11 July 1946, FEC Military Commission Orders number 11, dated 28 March 1947, and FEC Military Commission Orders number 12, dated 31 March 1947.

FOR THE COMMANDING GENERAL:

lcc to
Legal Sec, SCAP (Manila Br)
Exec Off, WCT

RESTRICTED

HEADQUARTERS
795TH MILITARY POLICE BATTALION
LUZON PRISONER OF WAR CAMP #1
APO 900

25 April 1947

MEMORANDUM TO: Commanding General, PHILRYCOM, APO 707

SUBJECT: Report of Execution of Japanese.

1. In compliance with par 4, of your Secret Memorandum to Commanding General, Base X, and Adjutant General, PHILRYCOM (AFWESPAC), dated 11 February 1946, the following report is submitted:

a. As ordered by your SECRET letter, Subject: "Execution of Sentence, "GSJA 000.5, the following named Japanese were executed by hanging at Luzon Prisoner of War Camp #1, APO 900, Luzon P.I., on 24 April 1947.

1- KONO, Takeshi - Trap Sprung at 1830 hrs; pronounced dead at 1841 hrs.
2- FUJII, Hajime - Trap sprung at 1843 hrs; pronounced dead at 1857 hrs.
3- MIKAMI, Koe - Trap sprung at 1859 hrs; pronounced dead at 1913 hrs.

b. Each of the condemned prisoners was accompanied to the place of execution by a Catholic priest, who conducted a general service for each of the condemned. All Budhist or Shinto priests have been repatriated. None of the condemned took exception to the religious advisor furnished them.

c. The letter ordering the execution was read to the prisoners in the following order at the time indicated:

1-KONO, Takeshi	- at 1715 hrs.
2-FUJII, Hajime	- at 1730 hrs.
3-MIKAMI, Koe	- at 1745 hrs.

d. Behaviour:

1-KONO, Takeshi	- Calm
2-FUJII, Hajime	- very quiet
3-MIKAMI, Koe	- calm, resigned.

e. Final Statement:

1-KONO, Takeshi	- Attached (Not Translated)
2-FUJII, Hajime	- Attached (Not Translated)
3-MIKAMI, Koe	- Attached (Not Translated)

f. The bodies of the condemned and all concerned the execution departed the place of execution at 1920 hours, 24 April 1947.

g. Strict compliance with all instructions of higher Headquarters contained in memorandum and letters referred to in this communication were carried out and all attendant duties were processed expeditiously.

/s/ John H. Bostic
/t/ JOHN H. BOSTIC
Major CMP
Commanding.

f. The bodies of the condemned and all concerned the execution departed the place of execution at 1920 hours, 24 April 1947.

g. Strict compliance with all instructions of higher Headquarters contained in memorandum and letters referred to in this communication were carried out and all attendant duties were processed expeditiously.

/s/ John H. Bostic
/t/ JOHN H. BOSTIC
Major CMP
Commanding.

RESTRICTED SECRET

sgw/mhb/rre

HEADQUARTERS
PHILIPPINES-RYUKYUS COMMAND

OSJA 000.5

APO 707
22 April 1947

SUBJECT: Execution of Sentence.

TO : Commanding Officer, Luzon POW Camp #1, APO 900.

1. Your attention is directed to Military Commission Orders No. 25, dated 11 July 1946, issued from General Headquarters, United States Army Forces, Pacific, confirming the sentence of death by hanging of Takeshi KONO 51J-102147, adjudged in the case of Takeshi KONO.

2. Your attention is also directed to Military Commission Orders No. 11, dated 28 March 1947, issued from General Headquarters, Far East Command, confirming the sentence of death by hanging of Hajime FUJII 51J-150099, adjudged in the case of Hajime FUJII.

3. Your attention is further directed to Military Commission Orders No. 12, dated 31 March 1947, issued from General Headquarters, Far East Command, confirming the sentence of death by hanging of Koe MIKAMI 51J-150380, adjudged in the case of Koe MIKAMI, et al.

4. In accordance with Memorandum from Commanding General, PHILRYCOM (then AFWESPAC) directed to Provost Marshal, PHILRYCOM (then AFWESPAC) dated 21 August 1946, subject: "Instructions Governing the Execution of Japanese War Criminals", you are hereby directed to execute the sentences as to these condemned war criminals, stripped of uniforms, decorations and other appurtenances signifying membership in the military profession as follows:

Place of Execution: Luzon POW Camp #1.

Time of Execution : 24 April 1947 at hours to be fixed by you.

Order of Execution: Takeshi KONO first, Hajime FUJII second and Koe MIKAMI last.

RESTRICTED

~~SECRET~~

Ltr fr Hqs PHILRYCOM, APO 707, file GSJA 000.5, dtd 22 April 1949
subj: "Execution of Sentence".
(Cont'd)

5. The classification of this directive shall remain "SECRET" until one day after the date of execution at which time it shall become "RESTRICTED".

GEO. F. MOORE
Major General, U.S. Army
Commanding

Incls:
1- AFPAC MCO #25, dtd 11 July 46 (4 copies)
2- FEC MCO #11, dtd 28 Mar 47 (4 copies)
3- FEC MCO #12, dtd 31 Mar 47 (4 copies)

~~RESTRICTED~~

2

205 J

GENERAL HEADQUARTERS
UNITED STATES ARMY FORCES, PACIFIC

Military Commission)
: APO 500
: 11 July 1946
Orders No.....25)

Before a Military Commission which convened at the High Commissioner's Residence, Manila, Philippine Islands, on 15 April 1946, pursuant to Letter Order, File AG 000.5 (5 Dec 45) IS, General Headquarters, Supreme Commander for the Allied Powers, dated 5 December 1945, subject: Regulations Governing the Trial of Accused War Criminals; Letter Order, File, AG 000.5 (1 Apr 46) IS, General Headquarters, Supreme Commander for the Allied Powers, dated 1 April 1946, with indorsement thereto, subject: Trial of Takeshi Kono; and paragraph 21, Special Orders Number 85, Headquarters, United States Army Forces, Western Pacific, 12 April 1946, was arraigned and tried:

Lieutenant General Takeshi Kono, Imperial Japanese Army.

CHARGE: That Takeshi KONO, then a Lieutenant General of the Imperial Japanese Army, did, on the dates and at the places set forth in the Specifications hereto attached, unlawfully disregard and fail to discharge his duties in controlling the operations of members of his command by permitting them to commit brutal atrocities and other high crimes against the people of the United States and the Philippines; and he, Takeshi KONO, thereby violated the laws of war.

Specification 1: In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Ticongcahoy, Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 14 unarmed, noncombatant Filipino civilians, including Buenvenido AZUELO, in violation of the laws of war.

Specification 2: In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Progreso, Ajuy, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 42 unarmed, noncombatant Filipino civilians, including Domini BONIFACIO, Felicitas ROSADAS and Clemente ROSADAS, in violation of the laws of war.

Specification 3: In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill Paulino BORRA, in violation of the laws of war.

Specification 4: In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Samponongbolo, Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command

to kill about 12 unarmed, noncombatant Filipino civilians, including Basilio POSADAS and a Chinese nicknamed "Iniong", in violation of the laws of war.

Specification 5: In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Ticongcahoy, Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 60 unarmed, noncombatant Filipino civilians, in violation of the laws of war.

Specification 6: In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at barrio Agbobolo, Ajuy, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill 2 unarmed, noncombatant civilians, including a Chinese named AKAW, in violation of the laws of war.

Specification 7: In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Maligayligay, Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 84 unarmed, noncombatant civilians, including Jose CAPACILLO and Porfirio CAPACILLO, in violation of the laws of war.

Specification 8: In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Samponongbolo, Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 60 unarmed, noncombatant civilians, in violation of the laws of war.

Specification 9: In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near Ajuy, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 22 unarmed, noncombatant civilians, including Aurelio ARTACHO and Crescencio TUPAZ, in violation of the laws of war.

Specification 10: In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Gibato, Dumarao, Capiz, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 100 unarmed, noncombatant civilians, including Jose ROMOALDO, Mrs. Jose ROMOALDO and Mariano ROMOALDO, in violation of the laws of war.

Specification 11: In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Nabitasan, Ajuy, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 4 unarmed, noncombatant civilians, including Deogracias VILLARUZ and Nicolas AGOTAYA, in violation of the laws of war.

(MCO 25)

Specification 12: In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, near barrio Gubaton, Ajuy, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 20 unarmed, noncombatant civilians, including Jaymo DURIN, Juanito DURIN and Claudio HOMICILLADA, in violation of the laws of war.

Specification 13: In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 20 unarmed, noncombatant civilians, in violation of the laws of war.

Specification 14: In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Maligayligay, Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 40 unarmed, noncombatant civilians, in violation of the laws of war.

Specification 15: In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Samponongbolo, Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to brutally mistreat and to kill about 12 unarmed, noncombatant civilians, including Coronacion DEZA, in violation of the laws of war.

Specification 16: In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Alaginay, Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to torture and brutally mistreat an unascertained number of civilians and to kill about 8 unarmed, noncombatant civilians, in violation of the laws of war.

Specification 17: In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Calamingan, Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 40 unarmed, noncombatant civilians, including Manuelita de IMPROGO and Leticia IMPROGO, in violation of the laws of war.

Specification 18: In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near sitio Cadagmayan, Pilar, Capiz, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to torture, brutally mistreat and kill about 36 unarmed, noncombatant civilians, including Lazaro ARDEMIL, Justa BERTASO and Aurora SANTO, in violation of the laws of war.

(MCO 25)

Specification 19: In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near Passi, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 150 unarmed, noncombatant civilians, in violation of the laws of war.

Specification 20: In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Jimomoa, Passi, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill Mariano YAP and 4 members of his family, in violation of the laws of war.

Specification 21: In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Jimomoa, Passi, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill an unascertained number of unarmed, noncombatant civilians, including one BALLEZA, in violation of the laws of war.

Specification 22: In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, near Ajuy, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 26 unarmed, noncombatant civilians, in violation of the laws of war.

Specification 23: In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near Madarag, Passi, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 3 unarmed, noncombatant civilians, in violation of the laws of war.

Specification 24: In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Nueva Invencion, Barotac Viejo, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 50 unarmed, noncombatant civilians, in violation of the laws of war.

Specification 25: In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Maligayligay, Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 100 unarmed, noncombatant civilians, in violation of the laws of war.

Specification 26: In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Paquan, Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 6 unarmed, noncombatant civilians, in violation of the laws of war.

Specification 27: In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, near Ajuy, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 50 unarmed, noncombatant civilians, in violation of the laws of war.

Specification 28: In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill 2 unarmed, noncombatant civilians, in violation of the laws of war.

Specification 29: In that Takeshi KONO, in the month of October 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near Batan, Capiz, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 100 unarmed, noncombatant civilians and to brutally torture and mistreat an unascertained number of unarmed, noncombatant civilians, in violation of the laws of war.

Specification 30: In that Takeshi KONO, in the month of October 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near Altavas, Capiz, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 40 unarmed, noncombatant civilians, in violation of the laws of war.

Specification 31: In that Takeshi KONO, in the month of October 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near Balete, Capiz, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 100 unarmed, noncombatant civilians, in violation of the laws of war.

Specification 32: In that Takeshi KONO, in the month of November 1943 and during a time of war between the United States of America, its allies and Japan, did, in the mountains, near Despojols, Tablas Islands, Romblon Province, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill one unidentified noncombatant civilian, in violation of the laws of war.

Specification 33: In that Takeshi KONO, in the month of November 1943 and during a time of war between the United States of America, its allies and Japan, did, in the mountains near Despojols, Tablas Islands, Romblon Province, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to brutally mistreat and torture an unidentified noncombatant civilian, in violation of the laws of war.

Specification 34: In that Takeshi KONO, in the month of October 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near Banga, Capiz, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 300 unarmed, noncombatant civilians, in violation of the laws of war.

(MCO 25)

Specification 35: In that Takeshi KONO, in October and November 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near Libacao and in the mountains near Libacao, Capiz, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill an unascertained number of unarmed, noncombatant civilians, in violation of the laws of war.

Specification 36: In that Takeshi KONO, in the month of December 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near Camp Hopevale, Tapaz, Capiz, Philippines, unlawfully permit members of the imperial Japanese Army then under his command to brutally torture, mistreat and kill about 17 unarmed, noncombatant citizens of the United States of America, including Dr. and Mrs. Francis H. Rose, Rev. and Mrs. Earle F. Rounds, Douglas Rounds, Mrs. J. H. Covell and Miss Dorothy A. Dowell, in violation of the laws of war.

Specification 37: In that Takeshi KONO, in the month of August 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Parara, Tigbauan, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to torture, brutally mistreat and kill about 28 unarmed, noncombatant civilians, including one TRISTEZA and Vicente LEDESMA, in violation of the laws of war.

Specification 38: In that Takeshi KONO, in the month of August 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Buenavista, Leon, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 10 unarmed, noncombatant civilians, including Cirila JAGUREN and Maximo CAGOD, in violation of the laws of war.

Specification 39: In that Takeshi KONO, in the month of April 1944 and during a time of war between the United States of America, its allies and Japan, did, at barrio Hamog, Leon, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command, to kill an unascertained number of unarmed, noncombatant civilians, including Maria SABORNIDO and Sabino TUNAY, in violation of the laws of war.

Specification 40: In that Takeshi KONO, in the month of May 1944, and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Maringyan, Miagao, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 7 unarmed, noncombatant civilians, including Bernardo NOBLEZADA and attempt to kill Jose MONTALBAN, in violation of the laws of war.

Specification 41: In that Takeshi KONO, in the month of January 1944 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio San Jose, Miagao, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 12 unarmed, noncombatant civilians, including Salvacion FORTES

and to attempt to kill about 3 unarmed, noncombatant civilians, including Bernardita MAMAN, in violation of the laws of war.

Specification 42: In that Takeshi KONO, in the month of March 1944 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Mat-y, Miagao, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 35 unarmed, noncombatant civilians, including Maria MOYONG, Jose ROMANO, Anastacio NUFABLE and Frederico NUFABLE and to attempt to kill about 9 unarmed, noncombatant civilians, including Adela ESLASIN and Remedios MACANAYNAY, in violation of the laws of war.

Specification 43: In that Takeshi KONO, in the month of May 1944 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Paro-on, Miagao, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 11 unarmed, noncombatant civilians, including Lucia MAULIT and Tomas NOVICO, in violation of the laws of war.

Specification 44: In that Takeshi KONO, in the month of April 1944 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Cagbang, Miagao, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 3 unarmed, noncombatant civilians, including Valeriano FACTO and to attempt to kill Guillermo FORTUGANA, in violation of the laws of war.

Specification 45: In that Takeshi KONO, in the years 1943 and 1944 and during a time of war between the United States of America, its allies and Japan, did, at or near the Iloilo High School, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill an unascertained number of unarmed, noncombatant civilians, in violation of the laws of war.

Specification 46: In that Takeshi KONO, in the month of May 1944 and during a time of war between the United States of America, its allies and Japan, did, at Buenavista, Guimaras Island, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to brutally torture, mistreat and kill Edison GARGANERA, in violation of the laws of war.

Specification 47: In that Takeshi KONO, in the month of December 1944 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Supang, Buenavista, Guimaras Island, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to brutally torture, mistreat and kill an unascertained number of unarmed, noncombatant civilians, including Demetrio HOYAN, in violation of the laws of war.

Specification 48: In that Takeshi KONO, in the month of June or July 1944 and during a time of war between the United States of America, its

allies and Japan, did, at or near Arevalo, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 4 unarmed, noncombatant civilians, including Siting PARCON and Eriborto PAVILLAR, in violation of the laws of war.

Specification 49: In that Takeshi KONO, in the month of April 1945 and during a time of war between the United States of America, its allies and Japan, did, at or near sitio San Juan, Silay, Negros Occidental, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to torture, brutally mistreat and kill an unidentified member of the Armed Forces of the United States, then a disarmed prisoner of war, in violation of the laws of war.

PLEAS

To all Specifications and the Charge: Not Guilty

FINDINGS

Of all the Specifications: Guilty, with the following exceptions:

Of Specification 10: Guilty, except the words "about 100," substituting therefor the words "about 54."

Of Specification 19: Guilty, except the words "about 150," substituting therefor the words "about 129."

Of Specification 21: Guilty, except the words "an unascertained number of," substituting therefor the words "about 40."

Of Specification 22: Guilty, except the words "about 26," substituting therefor the words "about 18."

Of Specification 27: Guilty, except the words "about 50," substituting therefor the words "about 37."

Of Specification 31: Guilty, except the words "about 100," substituting therefor the words "between 80 and 300."

Of Specification 34: Guilty, except the figures "300," substituting therefor the figures "200."

Of Specification 39: Guilty, except the words "an unascertained number of," substituting therefor the words "about 86."

(MCO 25)

Of Specification 43: Guilty, except the words "Tomas Novico."

Of Specification 44: Guilty, except the word "Cagbang," substituting therefor the word "Frantilla."

Of Specification 45: Guilty, except the words "an unascertained number of," substituting therefor the word "seven."

Of Specification 47: Guilty, except the words "torture, mistreat and kill an unascertained number of," substituting therefor the words "kill 12."

Of the excepted words in Specifications 10, 19, 21, 22, 27, 31, 34, 39, 43, 44, 45, and 47, Not Guilty; of the substituted words therein, Guilty.

Of the Charge : Guilty

SENTENCE

Death by hanging.

The sentence was adjudged 1 May 1946.

The following is the action of the reviewing authority:

"HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL
APO 707

17 June 1946

In the foregoing case of the United States vs. Lieutenant General Takeshi KONO, 51J-102147, of the Imperial Japanese Army, the sentence is approved. Pursuant to paragraph 2, First Indorsement, General Headquarters, United States Army Forces, Pacific, 1 April 1946, to Letter, General Headquarters, Supreme Commander for the Allied Powers, file AG 000.5 (1 Apr 46) LS, Subject: Trial of Takeshi Kono, 1 April 1946, the execution of the sentence is withheld pending the action of the Supreme Commander for the Allied Powers.

(signed) W. D. Styer
(typed) W. D. STYER
Lieutenant General, United States Army
Commanding"

The following is the action of the confirming authority:

(MCO 25)

"GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

APO 500
9 July 1946

In the foregoing case of Lieutenant General Takeshi Kono, 51J-102147, Imperial Japanese Army, the sentence is confirmed and will be duly executed under the supervision of and at a time and place to be designated by the Commanding General, United States Army Forces, Western Pacific.

(signed) Douglas MacArthur
(typed) DOUGLAS MacARTHUR
General of the Army, United States Army
Supreme Commander"

BY COMMAND OF GENERAL MacARTHUR:

PAUL J. MUELLER,
Major General, General Staff Corps,
Chief of Staff.

OFFICIAL:

John B. Cooley
JOHN B. COOLEY,
Colonel, AGD,
Adjutant General.

(2057)

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE STAFF JUDGE ADVOCATE
APO 707

UNITED STATES OF AMERICA	)	
	)	
- vs -	)	R E V I E W
	)	
TAKASHI KONO	)	

MANILA, P. I.

DATE: 12 JUNE 1946

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL
APO 707

17 June 1946

In the foregoing case of the United States vs. Lieutenant General Takeshi KONO, 51J-102147, of the Imperial Japanese Army, the sentence is approved. Pursuant to paragraph 2, First Indorsement, General Headquarters, United States Army Forces, Pacific, 1 April 1946, to Letter, General Headquarters, Supreme Commander for the Allied Powers, file AG 000.5 (1 Apr 46) LS, Subject: Trial of Takeshi Kono, 1 April 1946, the execution of the sentence is withheld pending the action of the Supreme Commander for the Allied Powers.

W. D. STYER
Lieutenant General, United States Army
Commanding

AMH/RCG/at

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE STAFF JUDGE ADVOCATE
APO 707

12 June 1946

UNITED STATES	Place of Trial:	High Commissioner's Residence, Manila, P. I.
v.	Arraigned :	15 April 1946
TAKESHI KONO	Tried :	15-30 April 1946
	Sentenced :	1 May 1946

x - x

CHARGE

That accused, a Lieutenant General in the Imperial Japanese Army, did unlawfully disregard and fail to discharge his duties by permitting members of his command to commit atrocities and crimes against people of the United States and Philippines all in violation of the laws of war (R 8).

SPECIFICATIONS

That accused, during a time of war between the United States, its allies and Japan, did, on or about the times and at or near the places indicated in the Philippines, in violation of the laws of war, unlawfully permit members of the Imperial Japanese Army under his command to:

Spec. No.	Date	Place	Violation
1	September '43	Ticongcahoy, Sara, Iloilo	kill about 14 unarmed, noncombatant Filipino civilians, including Buenvenido AZUELO (R 9)
2	September '43	Progreso, Ajuy, Iloilo	kill about 42 unarmed, noncombatant Filipino civilians, including Domini BONIFACIO, Felicitas and Clemente POSADAS (R 9)
3	September '43	Sara, Iloilo	kill Paulino BORRA (R 9)
4	September '43	Samponongbolo, Sara, Iloilo	kill about 12 unarmed, noncombatant Filipino civilians, including Basilio POSADAS and a Chinese nicknamed "Iniong" (R 9)
5	September '43	Ticongcahoy, Sara, Iloilo	kill about 60 unarmed, noncombatant Filipino civilians (R 10)

6	September '43	Agboboto, Ajuy, Iloilo	kill 2 unarmed, noncombatant civilians, including a Chinese named AKAN (R 10)
7	September '43	Maligayligay, Sara, Iloilo	kill about 84 unarmed, noncombatant civilians, including Jose and Porfirio CAPACILLO (R 10)
8	September '43	Samponongbolo, Sara, Iloilo	kill about 60 unarmed, noncombatant civilians (R 10)
9	September '43	Ajuy, Iloilo	kill about 22 unarmed, noncombatant civilians, including Aurelio ANTAGNO and Crescencio TUPAZ (R 11)
10	September '43	Cibato, Dumarao, Capis	kill about 100 unarmed, noncombatant civilians, including Jose, Mrs. Jose and Mariano RONDALDO (R 11)
11	September '43	Nabitasan, Ajuy, Iloilo	kill about 4 unarmed, noncombatant civilians, including Deogracias VILLARUZ and Nicolas AGOTAYA (R 11)
12	September '43	Gubaton, Ajuy, Iloilo	kill about 30 unarmed, noncombatant civilians, including Jayme and Juanito DURIN and Claudio ROMICILLADA (R 11)
13	September '43	Sara, Iloilo	kill about 20 unarmed, noncombatant civilians (R 12)
14	September '43	Maligayligay, Sara, Iloilo	kill about 40 unarmed, noncombatant civilians (R 12)
15	September '43	Samponongbolo, Sara, Iloilo	kill about 12 unarmed, noncombatant civilians, including Coronacion DEZA (R 12)
16	Septamber '43	Alagingay, Sara, Iloilo	torture and brutally mistreat an unascertained number of civilians and to kill about 8 unarmed, noncombatant civilians (R 12)
17	September '43	Calamingan, Sara, Iloilo	kill about 40 unarmed, noncombatant civilians, including Manuelita de and Leticia IMPROGO (R 13)
18	September '43	Cadagmayan, Sara, Iloilo	torture, brutally mistreat and kill about 36 unarmed, noncombatant civilians, including Lazaro ARDENIL, Justa BERTASO and Aurora SANTO (R 13)

19	September '43	Passi, Iloilo	kill about 150 unarmed, noncombatant civilians (R 13)
20	September '43	Jimomomua, Passi, Iloilo	kill Mariano YAP and 4 members of his family (R 13)
21	September '43	Jimomomua, Passi, Iloilo	kill an unascertained number of unarmed, noncombatant civilians, including one BALLEZ (R 14)
22	September '43	Ajuy, Iloilo	kill about 26 unarmed, noncombatant civilians (R 14)
23	September '43	Madarag, Passi, Iloilo	kill about 3 unarmed, noncombatant civilians (R 14)
24	September '43	Nueva Invencion, Barotac Viejo, Iloilo	kill about 50 unarmed, noncombatant civilians (R 14)
25	September '43	Maligayligay, Sara, Iloilo	kill about 100 unarmed, noncombatant civilians (R 14-5)
26	September '43	Paquan, Sara Iloilo	kill about 6 unarmed, noncombatant civilians (R 15)
27	September '43	Ajuy, Iloilo	kill about 50 unarmed, noncombatant civilians (R 15)
28	September '43	Sara, Iloilo	kill 2 unarmed, noncombatant civilians (R 15)
29	October, 1943	Batan, Capiz	kill about 100 unarmed, noncombatant civilians and brutally torture and mistreat an unascertained number of unarmed, noncombatant civilians (R15-6)
30	October, 1943	Altavas, Capiz	kill about 40 unarmed, noncombatant civilians (R 16)
31	October, 1943	Balete, Capiz	kill about 100 unarmed, noncombatant civilians (R 16)
32	November '43	Despojols, Tablas Islands, Romblon Province	kill one unidentified noncombatant civilian (R 16)
33	November '43	Despojols, Tablas Islands, Romblon Province	brutally mistreat and torture an unidentified noncombatant civilian (R 17)
34	October, 1943	Banga, Capiz	kill about 300 unarmed noncombatant civilians (R 17)
35	October and November '43	Libacao, Capiz	kill an unascertained number of unarmed, noncombatant civilians (R 17)

36	December '43	Camp Hopevale, Tapaz, Capiz	brutally torture, mistreat and kill about 17 unarmed, noncombatant citizens of the United States, including Dr. and Mrs. Francis H. ROSE, Rev. and Mrs. Earle F. ROUNDS, Douglas ROUNDS, Mrs. J. H. COVELL and Miss Dorothy A. DOWELL (R 17-8)
37	August, 1943	Parara, Tigbauan, Iloilo	torture, brutally mistreat and kill about 28 unarmed, noncombatant civilians, including one TRISTEZA and Vicente MEDESMA (R 18)
38	August, 1943	Buenavista, Leon, Iloilo	kill about 10 unarmed, noncombatant civilians, including Cirila JAGUREN and Maximo CAGOD (R 18)
39	April, 1944	Hamog, Leon, Iloilo	kill an unascertained number of unarmed, noncombatant civilians, including Maria SABORNIDO and Sabino TUNAY (R 18)
40	May, 1944	Maringyan, Miagao, Iloilo	kill about 7 unarmed, noncombatant civilians, including Bernardo NOBLEZADA and attempt to kill Jose MONTALBAN (R 19)
41	January, 1944	San Jose, Miagao, Iloilo	kill about 12 unarmed, noncombatant civilians, including Salvacion FORTES and attempt to kill about 3 unarmed, noncombatant civilians, including Bernardita NAMAN (R 19)
42	March, 1944	Mat-y, Miagao, Iloilo	kill about 35 unarmed, noncombatant civilians, including Maria MOYONG, Jose ROMANO, Anastacio and Federico NUFABLE, and attempt to kill about 9 unarmed, noncombatant civilians, including Adela ESLASIN and Remedios NACANAYNAY (R 19)
43	May, 1944	Paro-on, Miagao, Iloilo	kill about 11 unarmed, noncombatant civilians, including Lucia MAULIT and Tomas NOVICO (R 19-20)
44	April, 1944	Cagbang, Miagao, Iloilo	kill about 3 unarmed, noncombatant civilians, including Valeriano FACTO and attempt to kill Guillermo FORTUGANA (R 20)

45	1943-4	Iloilo High School, Iloilo	kill an unascertained number of unarmed, noncombatant civilians (R 20)
46	May, 1944	Buenavista, Guimaras Island	brutally torture, mistreat and kill Edison GARGANERA (R 20)
47	December, 1944	Supang, Buenavista, Guimaras Island	brutally torture, mistreat and kill an unascertained number of unarmed, noncombatant civilians, including Demetrio HOYAM (R 20-1)
48	October or November '44	Arevalo, Iloilo	kill about 4 unarmed, noncombatant civilians, including Siting PARCON and Eriberto PAVILLAR (R 21)
49	April, 1945	San Juan, Silay Negros Occidental	torture, brutally mistreat and kill an unidentified member of the Armed Forces of the United States, then a disarmed prisoner of war (R 21)

NOTE: During the course of the trial certain errors in the Specifications were discovered and the following corrections thereof were made with the consent of defense counsel and by order of the Commission:

Specification 6: "Agbobeto" changed to "Agbobolo"(R153-4)

Specification 10: "Cibato" changed to "Gibato" (R 229)

Specification 16: "Alagingay" changed to "Alaginay"(R 262)

Specification 18: "Sara, Iloilo" changed to "Pilar, Capiz" (R 426-7)

Specification 20: "Jimomomua" changed to "Jimomga" (R 294)

Specification 21: "Jimomomua" changed to "Jimomga" (R 294)

Specification 47: "HOYAM" changed to "HOYAN" (R 594)

Specification 48: "October or November" changed to "June or July" (R 603)

PLEA

Not Guilty.

FINDINGS AND SENTENCE

Of all the specifications: Guilty, with the following exceptions:

Of Specification 10: Guilty, except the words "about 100", substituting therefor the words "about 54".

Of Specification 19: Guilty, except the words "about 150", substituting therefor the words "about 129".

Of Specification 21: Guilty, except the words "an unascertained number of", substituting therefor the words "about 40".

Of Specification 22: Guilty, except the words "about 26", substituting therefor the words "about 18".

Of Specification 27: Guilty, except the words "about 50", substituting therefor the words "about 37".

Of Specification 31: Guilty, except the words "about 100", substituting therefor the words "between 80 and 300".

Of Specification 34: Guilty, except the figures "300", substituting therefor the figures "200".

Of Specification 39: Guilty, except the words "an unascertained number of", substituting therefor the words "about 86".

Of Specification 43: Guilty, except the words "Texas Novice".

Of Specification 44: Guilty, except the word "Cagbang", substituting therefor the word "Frantilla".

Of Specification 45: Guilty, except the words "an unascertained number of", substituting therefor the word "seven".

Of Specification 47: Guilty, except the words "torture, mistreat and kill an unascertained number of", substituting therefor the words "kill 12".

Of the excepted words in Specifications 10, 19, 21, 22, 27, 31, 34, 39, 43, 44, 45 and 47, Not guilty; of the substituted words therein, Guilty.

Of the Charge: Guilty

The Commission by secret ballot, all members being present and concurring, sentenced the accused to hang by the neck until dead (R 887).

I. ARRAIGNMENT:

A. At the time of arraignment the Commission, pursuant to duly published and authenticated orders (R 3-4), was composed of Col. William R. Hamby, President and Law Member, Col. John L. Goff, Col. Joseph H. Warren, Lt. Col. John A. Chase, and Capt. Jack Ellingson. Col. Warren, being temporarily excused from the Commission, did not sit during the arraignment (R 1).

B. The prosecution was conducted by Capt. William S. Ward, assisted by Lts. Addison T. Shepherd and William E. Murphy. The accused was represented by Lts. Clarence L. Waters and John E. McCullough (R 3).

C. The reporters, interpreters, Commission (exclusive of Col. Warren) and prosecution were sworn (R 5). It was agreed among the accused, his counsel and the prosecution that the accused having his own interpreter it would not be necessary to translate the proceedings at the trial into Japanese (R 1, 7).

D. The rights of the accused as set forth in paragraph 5b of the Regulations governing these trials (Prosecution Exhibit No. 1) were read and explained to the accused (R 6-7).

E. The Commission found a certified copy of the Charge and Specifications, together with a true and complete translation thereof, had been served on the accused 10 April 1946 (R 7). They were read to the accused in open court (R 7-21).

F. A Motion for a Bill of Particulars and to strike certain specifications (R 24-76) which had previously been discussed with the prosecution and Commission in conference was presented for incorporation into the record by the defense (R 23). The prosecution's answer thereto (R 76-83) was presented

for incorporation into the record (R 77). The Commission retired to consider the Motion and Answer and returned to announce the Motion was denied (R 84).

G. Following the denial of the above-mentioned motion the accused pleaded Not Guilty (R 84).

II. TRIAL:

A. Formal Matters.

1. Each witness was duly sworn before testifying, and in the event there was an interruption of his testimony he was, on resuming the stand, admonished he was still under oath.

2. Two additional interpreters were sworn (R 145, 155).

3. Col. Warren joined the Commission 17 April 1946 at which time he was sworn in and the proceedings were briefly reviewed for him, supplementing his own familiarization with the record (R 222-7).

4. Col. Goff thrice absented himself from the trial (R 322, 449, 819) and upon rejoining the Commission the proceedings transpiring during his absence were made known to him (R 385-91, 480-2, 838-43).

5. The prosecution introduced into the record the internment serial number of the accused as 513-102147 (R 89).

6. The defense proposed to change the word "August" on page 2 of its Exhibit A to "June", and there being no objection thereto by the prosecution it was so ordered by the Commission (R 258). The prosecution used an exhibit identified as No. 30 which was obviously a statement previously taken from the witness being examined. It was not made part of the record nor introduced into evidence. No objection was raised by the defense (R 712).

B. Prosecution Evidence.

Ryuichi Tozuka, a lieutenant colonel who served under General Kono from May,1943, until the surrender in September,

1945, (R 90-2, 159-62) admitted he went out on punitive expeditions (R 92-3, 105-7, 169-7) but never heard of any civilians being killed or tortured (R 112, 187-9, 193). In fact, his orders were to treat people kindly, capture only guerilla leaders and wireless sets (R 165, 167, 191). He identified his own photograph (Pros Exh No. 3) and the photographs of 1st Lt. Hajime Fujii (R 93-4, Pros Exh No. 4), 2d Lt. Noriyuki Otsuka (R 94, Pros Exh No. 5), Lt. Col. Hidemi Watanabe (R 94, Pros Exh No. 6), 1st Lt. Toshimi Kumai (R 97, Pros Exh No. 7), 1st Lt Chiyomi Toyota (R 97, Pros Exh No. 8), Sgt Norio Matsuzaki (R 97-8, Pros Exh No. 9), WO Fusatero Shin (R 98, Pros Exh No. 10), Sgt Maj Tadataka Kuwano (R 99, Pros Exh No. 11), Capt Jiro Motoki (R 99, Pros Exh No. 12), Sgt Maj Tokise Makita (R 100, Pros Exh No. 13), and Leading Pvt Hisaki Itai (R 100, Pros Exh No. 14). Witness stated all but Watanabe and Motoki participated in punitive expeditions while Kono was their Commanding General (R 101-2). All save Watanabe and Shin served under witness. Witness estimated there were 150,000 guerrillas on Panay from 1943 to 1945 and they used women and children to help them (R 168-9). His men were instructed not to execute without his permission (R 186-7). Witness identified Defense Exhibit A (R 159), a chart showing chain of command applicable to this case.

The evidence presented by the prosecution is given by specification and will be summarized in a like manner.

Specification 1. At Tiongcahoy, Iloilo, 12 September 1943, Estrella Azuelo was captured by Japanese with some 100 Filipino evacuees, Lt Fujii being one of the capters (R 116-7). The 13 males in the group were executed by Lt Fujii (R 119-120) as was the wife of Capt Fajardo (R 117). Witness' brother, Buenvenido Azuelo was among those executed (R 118), which execution witness saw at close range (R 118-9). The survivors

gathered wood and piled it on the bodies which were burned (R 118-9). Her brother was not a guerrilla, the people killed were unarmed and there were no trials (R 120-2).

Specifications 2, 3, 4, and 5. Severo Posadas was captured with some 44 others 9 September 1943 (R 125). The Japanese saved him and his son Basilio to work for them and Fujii killed the others, including Clemente Posadas, his father, Daniel Bonifacio, his wife, and Felicitas Posadas, his daughter (R 126-9). At Barrio Guan the Japanese caught Paulino Barra, whipped him, made him work until he dropped by the road, then bayoneted him (R 130-1). At Sampanengbolo ten more were captured and all but witness were executed by Otsuka, the witness' son, Basilio being included (R 131-2). The Chinese, Iniong, was killed by beating (R 133, 146). At Tiongenboy witness saw about 50 persons killed by Japanese group including Fujii and Otsuka (R 133-4). Several corpses were killed en route (R 135-6). There were no trials and none killed was a guerrilla (R 136). There was no combat involved in these killings (R 137.

Specification 6. Lt Fujii was identified as executioner of a Chinese, Ahaw, and an unidentified Filipino without trial at Agbobolo, about 15 September 1943 (R 147-9). Witness saw no guerrillas in Agbobolo at this time (R 153).

Specifications 7 and 8. About 17 September 1943, Nicolas Capacillo was captured and forced to guide Japanese to Sampanengbolo where he saw them kill about sixty persons, Col. Watanabe, Kumai, Fujii and Toyota being present (R 197-200). The same group of Japanese proceeded to Maligayligay where about eighty persons were killed including witness' father, Jose Capacillo, mother and brother's, Porfirio and Rodrigo (R 201-2).

Specification 9. At Gubaton, Ajuy, 19 September 1943, Cayetano Marra was captured and beaten and kicked by Col. Wata-

nabe (R 204-6). Witness saw colonel behead four Filipinos and soldier stab two (R 207, 218). Watanabe killed Lucas Dectelero, Aurelio Artacho and Nenang Navarro, the latter a woman (R 210-3). Eleven more Filipinos were killed including Crescencio Tupas (R 215, 218). There were no trials (R 216).

Specification 10. Augustin Dasas identified Toyota as the one who cut him with saber, picture of wound being introduced in evidence. He saw the bodies of four and witnessed killing of two others. Of the dead he recognized Jose and Mariano Romualdo and Encarnacion, wife of Jose (R 228-33).

Specification 11. 18 September 1943, Japanese captured Carmencita del Castillo and others, Col Watanabe beat them and directed the killing of three. Col. Watanabe killed Deogracias Villarus and Nicolas Agotaya, neither of whom were guerrillas within the knowledge of the witness (R 235-9).

Specification 12. Witness was forced to lead Japanese to Cubaten 19 September 1943 where he saw fifteen persons killed, including four women (R 242-3). Col. Watanabe was present at killing of Claudio Monicillada, Jayne Durin and others, none of whom received a trial or was recognized as a guerrilla (R 244-5).

Specifications 13, 14 and 15. Filomeno Cirineo was captured by Japanese about 19 September 1943 and acted as cargador with Lt Otsuka (R 248-9). Saw Otsuka actively participate in the killing of about twenty Filipinos at Sara (R 250). At Samponongbolo witness saw about twenty-one killed including Coronacion Deza who was raped (R 251-2). In Maligayligay about forty more were killed, Otsuka participating (R 253-4).

Specification 16 and 17. Pedro Iraya was forced to act as cargador about 23 September 1943 on an expedition of which Col. Watanabe and Sgt Matsuzaki were members (R 259-60). He saw the sergeant kill eight Filipinos at Alaginay (R 262). From there they went to Calamingan, 25 September, where the sergeant stabbed and hacked about forty unarmed Filipinos, including Manuelita de and Leticia Improgo (R 264). Witness identified

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Col Watanabe's photograph as a picture of one of the Japanese on the expedition (R 265). The witness was attached to 6th Military District Guerrillas (R 268).

Specification 18: Leopoldo Ardemil was captured by the Japanese 30 September 1943 at Cadagmayan with some thirty-six others (R 420). He was beaten with a stick of wood by Col Watanabe, whose picture he identified (R 421, 426), for not answering some questions (R 421). The Japanese took them one by one to be killed on a cliff. When it came his turn he jumped over and escaped. He returned the next day to find the bodies of Lazaro Ardemil, Justo Bertano and Aurora Santo, his father, mother and wife, respectively (R 422). On cross-examination he identified General Kono, the accused, as Col Watanabe (R 425).

Specifications 19, 20, 21 and 22. Nonito Tubungbanua was put in jail by the Japanese in July of 1943 where he remained until he left as a cargador with an expedition to Passi (R 276-7). Capt Watanabe, Lt Otsuka, Hirata, Matsuzaki and Shin were part of the expedition (R 278). Witness heard two boys and a girl were killed and Hirata killed two cargadors (R 279). Japanese killed about 129 persons in and around Passi and burned homes (R 280-4). The expedition arrived at Jimenea about 17 September 1943 where some forty persons were killed including Mariano Yap, his wife and three children and the Ballesa family (R 284-6). The Yap family was killed by Shin (R 285). Capt Watanabe, Otsuka and Hirata participated in the other killings (R 286). At Ajuy about eighteen persons were killed and burned (R 287-8). The witness identified the photos of Otsuka, Matsuzaki and Shin (R 289). He saw no trials and did not recognize picture of Col Watanabe (R 293).

Specification 23, 24, 25 and 26. Noberto Padora was pressed into service as a cargador about 11 September 1943 and

served twenty-eight days (R 295-6). He knew Col Watanabe, WO Shin and Sgt Matsuzaki and identified their photographs (R 301A-302, 304-5). He saw them kill three unarmed persons in Madarag (R 297-8), and participate in the killing of fifty in Nueva Invension (R 298-9), about 100 unarmed men, women and children at Maligayligay (R 300-1) and about thirty at Paquan (R 302-3).

Specifications 21, 23, 27 and 28. Delmacio Agrabante was used as cargador 11 September 1943 near Passi (R 308) and recognized Capt Watanabe, Lt Otsuka, Col Tezuka, Sgt Matsuzuki and Lt Fujii on expedition (R 309). Col Watanabe was head of one patrol (R 309-10) and identifies his photograph. Witness identifies photographs of others named (R 311, 315). At Jimenea he saw about seven Filipinos killed and in Madarag two others (R 310). In Buncal he saw people beheaded by Otsuka and others (R 311). He saw Genero Ballesa and his family killed (R 312). Otsuka participated in the killing of about 30 persons at Ajuy as directed by Col Watanabe (R 312-3).

Specifications 29, 30, 31, 32, 33, 34 and 35. An expedition under Col Tezuka (R 324, 361) took off for Batan where it arrived 18 October 1943. Japanese rounded up about 100 men, women and children, beat them and Otsuka, Kuwano, and Matsuzaki questioned them, witnesses identifying photographs of said Japanese (R 325-6, 362-3). Kuwana and Otsuka beheaded those rounded up (R 327-9, 363-4). Col Tezuka was in the street while beheading was going on and witness saw no trials for or weapons on those rounded up (R 329). At Altavas about forty civilians were questioned and killed by Kuwano, Otsuka and Matsuzaki while Col Tezuka was about twenty meters away (R 330-1, 364-5). Expedition was in Balete about a week while persons were brought in for questioning and almost all were executed

(R 332-6). Otsuka and Kuwano did the beheading in most instances (R 336, 366-7). On one patrol to Banga with Kuwano as leader some sixty persons were captured of whom fifteen were killed and remainder brought to Balete (R 367-9). On another Kuwano patrol surrendering citizens were machine-gunned (R 370-1), 378-9). Leaving Balete the expedition divided into two groups, the one under Col Tozuka, the other under Capt Watanabe (R 337, 372-3). Group 1, under Tozuka went to Libacao, Banga, Calibo, New Washington and Tablas Island where they went to Despejels, at which latter place, at the command of Lt Kumai, whose photograph was identified, an old man was stabbed to death (R 338-9). A young, blind woman was stripped and left suspended from tree branches in mountains (R 340-1). This trip took from latter part of October to early December, 1943 (R 344-54). No shots were fired at the expedition and no Japanese were killed (R 343). None of the executed was tried and none fought the Japanese (R 371, 374).

Specification 36. Col Tozuka was in charge of an expedition which went to Camp Hopevale, Tapaz, Capiz, in December, 1943 (R 392-3). Capt Watanabe, who was later killed, was in charge of group at Camp Hopevale (R 394). No weapons were found and no resistance was made by the sixteen missionaries rounded up and killed (R 395, 397). Matsuzaki, Kumai, Otsuka, Capt Watanabe and Kuwano were on expedition and Fujii may have been (R 398-9). The expedition was fired on once but no one was killed (R 404-5). The witness saw no wireless sets taken (R 405-6). Engracio C. Alora, General Secretary of Convention of Philippine Baptist Churches, Inc, went to Camp Hopevale and by means of knowledge of persons and a dentist identified skulls of five and found metal tags with names of two small boys. Witness named seventeen who were there, including Dr. and Mrs. Francis H. Rose, Rev. and Mrs. Earle F. Rounds, Douglas Rounds,

Dorothy A. Dowell and Mrs. James Covell (R 407-18).

Specification 37. 10 August 1943 Sgt Matsuzaki conducted an investigation of one Ango Tristeza (R 429). Finally took 23 men, 3 women and a baby and killed them (R 430). Witness identified pictures of Matsuzaki and Col Watanabe (R 432). The witness, working for the Confeser government, checked at Tigbauan and found some 700 persons had been killed, some of whom were tried or armed (R 436-7).

Specification 38. Antonio Canag was captured 12 August 1943 at Buenavista with his family. Col Watanabe was in charge of group and was seen to have stabbed one woman himself. Two of those killed were Cerila Jaguren and Maxima Caged (R 449-53). Juan Cabalfin saw Japanese under Col Watanabe, whose photograph he identified, kill his wife and children 12 August 1943 and burn his house (R 457-60).

Specification 39. At Namog, Japanese under Col Watanabe, on 10 April 1944, killed some forty people and hacked others with bolo (R 466, 476, 485-6). Col Watanabe's picture was identified as that of the man there in charge (R 468, 474). Among those killed were Matia Sabornido and Sabino Tamay (R 468, 470).

Specification 40. Jose Montalban, whom the Japanese attempted to kill, was apprehended 7 May 1944 at Maringyan. On the way to the hills he saw Makita whose photograph he identified bayoneting seven women (R 489-91). He saw Bernardo Noblesada killed (R 494-5). He was not a guerrilla (R 499) and never saw arms or ammunition taken from civilians (R 500).

Specification 41. Bernardita Naman was home in Miago, Iloilo, 13 January 1944 when five Japanese searched their house and found guerrilla rifles. Makita and Itai, whose pictures she identified, were in group (R 503-6). The two named killed

eleven members of her family and cut off her right hand (R 507-14). Her mother, Salvacion Fortes was killed (R 508). None of those killed was a guerrilla (R 515) altho one member of the family was a guerrilla (R 514-5).

Specification 42. Remedios Macanaynay and Adela Salacin were witnesses to the same incident at Mat-y where Japanese forced Filipinos out of foxholes where they were hiding to avoid bullets and machine-gunned them (R 518-20, 529-31). The first witness places the time as 11 March 1944 (R 518) while the second places it at 11 January 1944 (R 529-30, 540). Thirty-one of about forty persons were killed (R 524, 531) including Anastacio and Federico Nufable (R 522), Maria Mayong and Jose Romano (R 531). Itai (R 521, 523, 532-3, 534) and Makita (R 524, 532-3, 534-7) were two of the Japanese recognized by witnesses. None of the killed was a guerrilla or armed (R 534).

Specification 43. 4 May 1944, Japanese seized the Manlit family at Pare-an (R 541) and after questioning them, killed them. Among dead was Lucia Manlit. Witness escaped and hid and saw further killings (R 542-3), identifying Itai as killer (R 544). None of the dead was a guerrilla and only father had bolo (R 544).

Specification 44. Guillermo Fortugana was caught by Itai, 10 April 1944, with his wife Valeriana Pasto and two children (R 549-50). Itai struck him in the face with a rifle butt and hacked him twice with a saber (R 551) then stabbed his wife and children to death (R 552-3). He saw others killed, none of whom was armed or a guerrilla (R 555).

Specification 45. Witness worked at Iloilo garrison in 1943 and witnessed Kuwano killing six or seven people (R 561-4). Kuwano had reputation of being the executioner (R 575). Can't place date of killing other than in 1943 (R 567, 573).

Specification 46. Guillermo San Agustin was imprisoned at Buenavista, Guimaras Island, May 1944 (R 577) where he saw Edison Garganera tortured (R 577-9, 581). From group of Japanese brought into courtroom the witness identified Hamamoto as the Japanese who did questioning and torturing (R 584-5). Jose Hubero saw questioning and torture (R 587-8) and saw Shimmio bayonet Garganera and push him in water (R 588).

Specification 47. Aniceto Hoyan saw Japanese beat to death his sons, one of whom was Demetrio (R 595-7). His sons had no trial and were not guerrillas (R 599).

Specification 48. In June 1944, sometime after St. John's Day, Japanese under Meteki killed four boys who were spies for guerrillas (R 606-12, 617-20). Two of these boys were "Eating" Parcon and Eriberto Pavillar (R 615-6).

Specification 49. In April 1945, an American plane crashed near Kono's quarters near San Juan, Silay, Negros Occidental, and a surviver was brought there (R 622-3, 638-40). Surviver was tortured in presence of Kono (R 624-5, 641-2) and later executed in presence of Kono, Col Watanabe and Hamada (R 627, 633, 642-4), latter performing execution (R 633, 644). Col Watanabe's photograph was identified by the witnesses (R 625, 635, 645) and General Kono was identified in the courtroom (R 623, 636-7, 640).

C. Defense Evidence.

Lt Gen. Takaji Naki served in the Philippines in the 14th Army as Chief of Staff from March,1942 to surrender in September, 1945 (R 657-8). Two orders were issued to Kono in June, 1943 and April, 1944 to maintain peace and order by suppression of the enemy, meaning guerrillas, particularly on Panay (R 660), from whence came most radio transmission (R 661). General Kono was selected for the mission of suppression and

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Specification 47. Aniceto Hoyan saw Japanese beat to death his sons, one of whom was Demetrio (R 595-7). His sons had no trial and were not guerrillas (R 599).

Specification 48. In June 1944, sometime after St. John's Day, Japanese under Meteki killed four boys who were spies for guerrillas (R 606-12, 617-20). Two of these boys were "Eating" Parcon and Eriberto Pavillar (R 615-6).

Specification 49. In April 1945, an American plane crashed near Kono's quarters near San Juan, Silay, Negros Occidental, and a surviver was brought there (R 622-3, 638-40). Surviver was tortured in presence of Kono (R 624-5, 641-2) and later executed in presence of Kono, Col Watanabe and Hamada (R 627, 633, 642-4), latter performing execution (R 633, 644). Col Watanabe's photograph was identified by the witnesses (R 625, 635, 645) and General Kono was identified in the courtroom (R 623, 636-7, 640).

C. Defense Evidence.

Lt Gen. Takaji Naki served in the Philippines in the 14th Army as Chief of Staff from March,1942 to surrender in September, 1945 (R 657-8). Two orders were issued to Kono in June, 1943 and April, 1944 to maintain peace and order by suppression of the enemy, meaning guerrillas, particularly on Panay (R 660), from whence came most radio transmission (R 661). General Kono was selected for the mission of suppression and

winning Filipinos to Japanese cause (R 667). 14th Army Headquarters received no reports of atrocities (R 667) and none were ordered (R 672). General Kureda was satisfied with General Kono's control of troops around August, 1943 to the end of that year (R 670-1). No method of suppression was set up by 14th Army Headquarters (R 672). Said Headquarters did order that guerrillas would be tried before a military tribunal (R 676).

Sgt Maj. Tadataka Hamano during October to December, 1943 was attached to 37th Infantry Battalion in Iloilo (R 677) under command of Lt Col Tanuka (R 678), Capt Watanabe being his commanding officer (R 678). Col Watanabe never issued orders to him or went on expedition (R 678, 703). Witness stated there was some similarity in appearance between the Watanabes (R 678-81). He left on an expedition 17 October 1943 to Batan, Balete, Altavas, Banga and Libacao to capture wireless sets and guerrilla chiefs (R 681) with Capt Watanabe in immediate command (R 684). There was no one in Batan though about twenty persons were captured around there and 19 October 1943 they went to Altavas (R 685) and by there (R 686). The next day the expedition went to Balete and assaulted the house of a lieutenant in the guerrillas but he was gone (R 686-7). They caught five men with swords and turned them over to Capt Watanabe (R 687). There was no one in Balete (R 687) so went to Banga 21 October 1943 (R 687). In Banga, about 100 men surrendered and while Japanese were questioning them and asking they give up arms and tell where guerrilla intelligence headquarters were, some in the group ran away, firing started and about 80 were killed (R 688-696). On the next trip to Banga there was no one around but witness believes he may have seen a couple of the 80 corpses (R 696-7). On the 24th they captured a guerrilla sergeant after a short fight and turned him over to Capt Watanabe (R 697-8).

On 31 October they captured a wireless set and one guerrilla non-com (R 698, 700). Witness contracted malaria and returned to Iloilo 8 December 1943 (R 701) whence expedition returned 30 December 1943(R 702).

On cross-examination this witness stated Col Tosuka was his commanding officer from February, 1943 to 2 September 1945 (R 703-4). He had never heard of any trials for guerrillas (R 704) and previously stated he had never been on expeditions because he heard to admit that was equal to death sentence (R 704). The statement he made in which he said he killed 140 persons in Bataa was a lie (R 705-8). Witness once escaped from prison and on return said he executed 7 Chinese to get off bread and water (R 710-1). Witness identified photographs of Lts Otsuka and Kumai as individuals on expedition (R 713). He saw no women or children, dead or alive, in Bataa, 18 or 19 October, 1943, or in Altavas (R 713, 714) and saw none killed in Balete (R 715). He heard through an orderly a girl had been tortured by Lt Kumai and seventeen Americans had been killed in Tapaz (R 715). He would not say all eighty machine-gunned at Banga were guerrillas and thinks some civilians might have been killed on the expedition but does not know how many (R 717-8).

Masakazu Yamaguchi was a colonel serving directly under General Kono from May, 1943 to August, 1945 (R 720, 722). General Kono's orders were to capture wireless sets and guerrilla leaders but be kind to the people (R 726-8). What he knew about Panay was only what he heard but the guerrilla attacks on Panay were constant (R 723-5, 730).

Hidemi Watanabe as a lieutenant colonel, became staff officer of Kono Unit 13 May 1943 (R 731) and went to Iloilo City Headquarters 2 July 1943 (R 732). He met Capt Watanabe in Philippines but does not wish to pass judgment on their resemblance (R 733). The witness examined the chart of command, Defense

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Exhibit A, and pronounced it correct (R 734-7). Orders to General Kono and those issued by him in second paragraph said to capture guerrilla leaders and wireless sets but be kind to Filipinos (R 738-42). He says he was not in any of the places the prosecution witnesses say they saw him (R 743-9). He never heard of any atrocities and none to his knowledge was reported to General Kono (R 749-50). General Kono was a strict disciplinarian and sent court-martial cases to Manila as he did not have that power (R 750-2). General Kono issued orders to prevent damage to civilians (R 752-3). Col Watanabe said he never heard of American missionaries being killed at Camp Hopevale and had never been there (R 753-4) but heard some Americans were killed as guerrillas (R 754-5). Witness related his version of story about American aviator and says Capt Watanabe ordered his death (R 755-8). General Kono ordered Col Watanabe to punish Major Watanabe but he was killed by American artillery before action could be taken (R 759). The Filipino witnesses for prosecution could not know about this incident as they were not allowed in immediate vicinity of General Kono's Headquarters (R 759).

On cross-examination he said there were no bad reports on Major Watanabe (R 760). Whenever he was on Panay he never left Iloilo City (R 761) but later his memory served him better and he remembered a quick trip to Calibo in May, 1944 (R 761) and to Capiz in November, 1943 (R 762). He denied Governor Coram ever told him of mistreatment of civilians and he never told governor he was in command in General Kono's absence (R 762-5). He heard some civilians were killed in combat but not otherwise (R 766). He never heard of any trials being conducted by military authorities on Panay during 1943-1944 (R 766-7). He was on Guimaras Island around the end of August, 1943 and knew Candido Yngalla (R 767).

Yasuji Okada was a staff officer with 14th Army Headquarters (R 770) from December, 1942 to June, 1944 and from January to September, 1945 (R 771). His recollection is that orders to Kono Unit were to establish peace and order, capture guerrillas and wireless sets, and be kind to civilians (R 772-5). Promotions rested more with Personnel Bureau than with unit commander (R 775-7). Deliberate disobedience of orders would prevent promotion if reported (R 777), and General Kono was a strict disciplinarian (R 777). 14th Army Headquarters never ordered General Kono to mistreat civilians and he never reported he did (R 776). To the knowledge of the witness there were no military trials of any kind on Panay in 1943-1944 (R 778).

Satoshi Hada was in the Philippines from May, 1944 to August, 1945 (R 782) and served under General Kono from 30 May, 1944 to 21 June, 1944 (R 783). Capt Watanabe was made a major to fill Brigade Adjutant's position (R 785-7). At that time, neither General Kono nor the witness knew of any violation of laws of war by Watanabe (R 787-8).

On cross-examination, the witness said he never knew of Capt Watanabe being disciplined (R 789). He knew Col Watanabe as a fine man with whom to work (R 789-90). While Kono was a strict disciplinarian, his officers would not fear to report atrocities to him (R 791-2). General Kono always sought to know what was going on in his command (R 794) and Col Watanabe was not the type to conceal violation of orders (R 794).

Takeshi Kono stated he came to the Philippines 5 May 1943 and became Commanding Officer of Visayan Islands Group, particularly Panay, Guimaras and Tablas (R 797) with the mission of keeping order and peace (R 798). He had command over Panay from his date of arrival until surrender (R 800). Lt Cols Tozuka and Watanabe and Capt Watanabe were subordinates (R 800). Col

Watanabe never had command of troops and never went on punitive expeditions against guerrillas (R 800), though he did accompany witness to Guimaras Island for about three hours on 26 August 1943 (R 801). The witness stated his orders were always to capture guerrilla leaders and wireless communications and be kind to civilians (R 801-3) and he never heard of or saw any atrocities (R 805-11). He knew Dr. Caram and talked with him about ten times, two of which were business but received no complaints as to atrocities (R 805-8). He never issued any orders to kill American missionaries or knew they had been killed but some Americans were listed in guerrilla reports (R 809-11). He had no court-martial jurisdiction so guerrilla leaders were sent to Manila for trial and others were released (R 811-3). Witness went to Iloilo 30 June 1943 (R 814). He had no reports on Capt Watanabe and while he did not recommend him for promotion he did make an efficiency report on him (R 815-7). He heard about the American aviator after he had been executed, considered Maj Watanabe under arrest for ordering it and was going to have him court-martialed. Witness never saw the American (R 819-21) and believes the pressure of enemy on garrison caused Maj Watanabe to have him killed (R 822). No Filipinos were allowed closer than 300 meters to his shack in mountains back of Bacolod (R 822).

On cross-examination General Kono said he believed his men had heard about Rules of Land Warfare (R 827). He was not too impressed by Col Tezuka as a battalion commander but did nothing to correct the situation (R 824-5). He did not, as he had said on direct examination, make it a point to lay down his policies to men in his command even down to corporals (R 825-7). He had never heard that approximately 2500 persons were massacred on Panay and believes his control was ample (R 828-30). He admitted ordering the punitive expeditions and that he sometimes received no reports and did "as much as I can" to get them (R 830-1). He

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said Col Watanabe was one time in Capiz (R 831-2). His basic policy was to release guerrillas after educating them but sometimes it was necessary to kill them on the spot (R 832-3). He never once received a report that a single civilian was killed by a punitive expedition (R 836).

D. Prosecution Rebuttal Evidence.

The prosecution placed on the stand in rebuttal Fermin G. Caram who was governor of Iloilo Province from July, 1942 to 20 March 1945 (R 845). He identified General Kono and the pictures of Col Tsuka and Col Watanabe (R 846-7). The Japanese committed atrocities from the time they arrived until displaced by Americans but September, 1943 was the worst period (R 847). The witness complained to Col Tsuka personally (R 848-9) and went to General Kono about October, 1943 when Tsuka's promise to stop killings was not kept (R 849). Nothing came of this, so he kept complaining to Col Tsuka (R 850). He saw Col Watanabe and General Kono on an expedition in San Miguel and Oton in September, 1943 (R 850-1). In September and October, 1943 he complained to Col Watanabe about killings (R 854). Tsuka admitted civilians had been unlawfully killed (R 854). Witness had been told that Tsuka was the "terror of China" (R 854-5). There were no trials given civilians (R 854).

On cross-examination the witness said he had spoken to guerrilla captives in the presence of Japanese (R 856-7) and had secured the release of some persons (R 859-61). He never complainsd to Japanese that guerrillas were molesting civilians and their property but he did get word to the guerrillas about the burning of non-military buildings (R 861-4). The guerrillas had not threatened his life (R 865).

III. OPINION:

A. As to Jurisdiction.

1. Pursuant to authority vested in him the Commanding

General, United States Army Forces, Western Pacific, did, by paragraph 21, Special Orders No. 85, Headquarters, United States Army Forces, Western Pacific, 12 April 1946, properly establish this commission trying this matter.

The Commission had jurisdiction over the territory wherein it sat, over the person brought before it for trial and over the offenses with which he was charged. Letter, AG 000.5 (5 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, 5 December 1945, Subject: Regulations Governing the Trials of Accused War Criminals.

B. As to Procedure.

1. The members of the Commission were qualified to sit on this matter and they and the Prosecution, interpreters and reporters were duly sworn.

2. The accused was informed of his rights in open court and was competently represented by counsel appointed by the convening authority and of his choice. The Charge and Specifications were furnished the accused in the Japanese language and all testimony at the trial was translated to the accused by his individual interpreter.

3. The trial procedure established by the Rules and Regulations governing these trials was complied with in all respects.

4. The findings and sentences were returned with the requisite two-thirds vote in the affirmative by the members of the Commission constituting a quorum.

C. As to Motions.

At the arraignment the defense presented for incorporation into the record a combined Motion for a Bill of Particulars and to Strike Certain Specifications. From the record it appears the Commission, prosecution and defense counsel had met

in conference 13 April 1946 at which time this motion was discussed, the prosecution had presented its answer thereto, also now part of the record, and the parties had evidently agreed to proceed to trial on the basis of the Charge and Specifications served on the accused. The Commission in open court at the time of presentation of the Motion and Answer for the record, announced its decision to deny said motion.

This practice smacks of the pre-trial practice now used and advocated in the United States and is to be commended. It affords the parties ample opportunity to prepare themselves for what is to come at the actual trial. The defense was fully informed of the ruling to be made on its Motion and elected to proceed to trial. Being thus forewarned and proceeding to trial the defense was in no way prejudiced by the ruling of the Commission.

D. As to Evidence.

> "The commander alone is responsible to his superior for all that his unit does or fails to do. He cannot shift this responsibility to his staff or to subordinate commanders." (Staff Officer's Field Manual, FM 101-5, paragraph 1).

This succinct statement is one of the governing principles of the armed forces of all countries. The commander may order things to be done or not to be done and empower his subordinates to see that the orders are executed. Whatever results from these acts, however, remains the responsibility of the commander. This principle was recognized by the Hague Convention No. IV whereunder it is determined that a commander ordering or permitting commission of acts in violation of the laws of land warfare is subject to punishment by the belligerent into whose hands he may fall. (Rules of Land Warfare, FM 27-10, pages 86-7).

The evidence herein introduced presents a series of incidents occurring in a relatively restricted area over a

period of time from August, 1943 to April, 1945. That the incidents were violations of the laws of war cannot be doubted. That the incidents were committed by members of the accused's command cannot be questioned. That the incidents occurred on expeditions which were inaugurated pursuant to orders of the accused to capture guerrilla leaders and wireless sets is not open to debate.

The defense of the accused is that he did not order these violations but in fact told his subordinates to be kind to the Filipinos to win them over to the Japanese side of the conflict. He further asserts that he did not know these atrocities were occurring and had he known he would have punished the offenders. It is true but two or three of the thirty-nine prosecution witnesses had ever seen the accused. Two of these, as set forth in the evidence covering Specification 49, placed the accused at the scene of the maltreatment and execution of an unarmed, American flier, the only one of the atrocities with which the accused is directly associated.

This defense cannot be well taken. As in the Yamashita Case, 66 Sup Ct 340, the charge is the unlawful breach of duty by the accused in failing to control the members of his command by permitting them to commit the extensive and widespread atrocities. This accused has less reason than that accused for failing to know what his troops were doing. He was not nearly so hard pressed, his communications were more nearly intact and the area under his command was much smaller. The court in the Yamashita Case says:

> "The question then is whether the law of war imposes on an army commander a duty to take such appropriate measures as are within his power to control the troops under his command for the prevention of the specified acts which are violations of the law of war and which are likely to attend the occupation of hostile territory by an uncontrolled soldiery, and whether he may be charged with personal responsibility for his failure to take such measures when violations result."

The court then makes reference to various provisions of the Annex to Fourth Hague Convention of 1907, the Tenth Hague Convention and the Geneva Red Cross Convention of 1929 and concludes therefrom that a commander occupying a position similar to that of the accused in the instant case has an affirmative duty to take such measures as are "within his power and appropriate in the circumstances to protect prisoners of war and the civilian population".

It was the duty of this accused to ascertain from his subordinates what took place upon the expeditions. The testimony shows there were expeditions which returned and from which this accused had no report of the results thereof and evidently sought none. This is clearly indicative of indifference and represents a lackadaisical command. The crime of omission is often greater than the crime of commission. If the testimony of the accused and his witnesses is accepted at face value, then here is a perfect example of the crime of omission. For this the accused has been found guilty as charged and no reason is apparent for disturbing that finding.

IV. CLEMENCY:

No application for clemency has been presented by counsel for the accused and none is recommended.

V. RECOMMENDATION:

It is recommended the sentence herein be approved and the record of trial be forwarded to the Commander-in-Chief, United States Army Forces, Pacific, for action under paragraph 2 1st Ind, General Headquarters, United States Army Forces, Pacific, 1 April 1946, to basic letter, General Headquarters, Supreme Commander for the Allied Powers, AG 000.5 (1 Apr 46) LS, Subject: Trial of Takeshi Kono.

The form of action designed to effect the foregoing recommendation is attached.

EDWARD G. GRAHAM
1st Lieut., AC
Asst Staff Judge Advocate

I CONCUR:

ARETON M. HAYNES
Colonel, JAGD
Staff Judge Advocate

(2055)

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

UNITED STATES OF AMERICA	ARRAIGNMENT
vs	AND
TAKESHI KONO	PUBLIC TRIAL

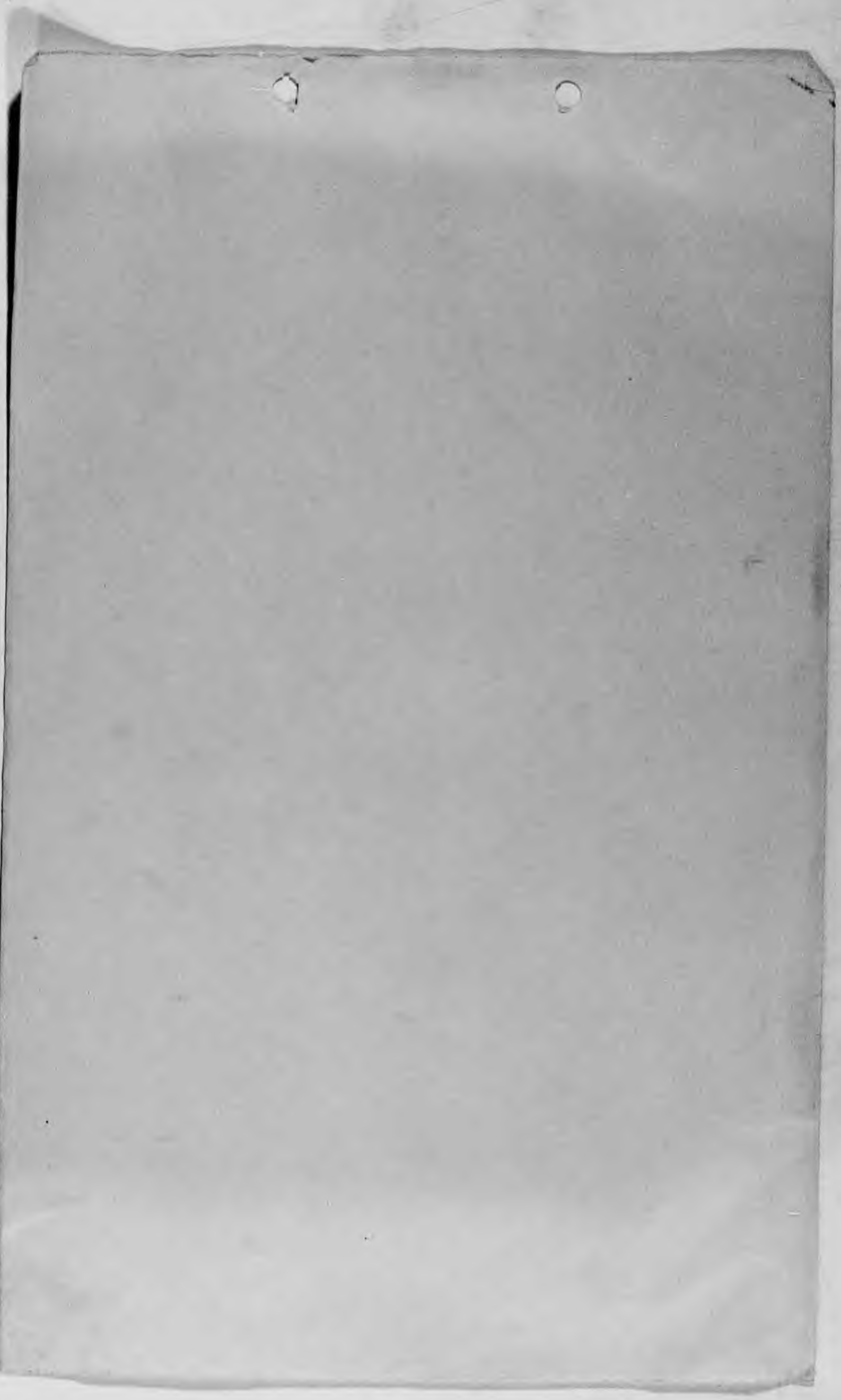
VOLUME I

PAGES 1 to 154

MANILA, P. I.

DATE: 15 April 1946

COPY NO.: 3



CERTIFICATION

This certifies that this volume is a part of the proceedings of the Military Commission appointed by Paragraph 21, Special Orders No. 85, Headquarters, United States Army Forces, Western Pacific, dated 12 April 1946, in the trial of the case of the United States of America v. Takeshi Kono.

Dated 7 May 1946

W. R. Hamby

WILLIAM R. HAMBY
Colonel, CAV
President of Commission

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
vs	)	ARRAIGNMENT AND PUBLIC TRIAL
	)	
TAKESHI KONO	)	
	)	

Court No. 2-B
High Commissioner's Residence,
Manila, P. I.
15 April 1946

Met, pursuant to notice, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL WILLIAM R. HAMBY, CAV, President and Law Member
COLONEL JOHN L. GOFF, CAC
COLONEL JOSEPH H. WARREN, INF (Excused)
LIEUTENANT COLONEL JOHN A. CHASE, (CMP) FA
CAPTAIN JACK ELLINGSON, CMP

APPEARANCES:

FOR THE PROSECUTION:
CAPTAIN WILLIAM S. YARD, JAGD, Chief Prosecutor
1ST LIEUTENANT ADDISON T. SHEPHERD, JAGD, Asst. Prosecutor
2ND LIEUTENANT WILLIAM E. MURPHY, INF, Asst. Prosecutor

FOR THE DEFENSE:
1ST LIEUTENANT CLARENCE L. WATERS, CMP, Chief Defense Counsel
2ND LIEUTENANT JOHN E. MC CULLOUGH, TC, Asst. Defense Counsel

INTERPRETERS FOR THE COMMISSION:
T/SGT. YOSHIAKI OGITA
T/SGT. ROY KATO
LUCY P. CASANOVAS
PRAXEDIO VILLALUZ
PEDRO GENOVES
CAPTAIN JESUS A. LAGDAMEO, JR.

REPORTERS FOR THE COMMISSION:
ARNOLD COHEN
WILLIAM COHEN

I N D E X

WITNESSES

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Estrella Azuelo	116	120			
Severo Posadas	124	137			145
Federico Arac	147	150			

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P R O C E E D I N G S

The Commission convened, pursuant to notice, at 0835 hours, 15 April 1946, in Court No. 2-B, High Commissioner's Residence, Manila, P. I.

COLONEL HAMBY: The Commission will convene and hear any matter to be brought before it.

CAPTAIN YARD: May the record show that the following members of the Commission are present: Colonel Hamby, Colonel Goff, Lieutenant Colonel Chase, and Captain Ellingson.

It has been agreed between the accused, defense counsel, and the prosecution that inasmuch as a personal interpreter is provided for the accused it will not be necessary, unless specifically requested, to translate the proceedings from English to Japanese.

COLONEL HAMBY: The proceedings will be so translated.

CAPTAIN YARD: There has been referred to this Commission for trial the case of the United States of America against Takeshi KONO. The accused is now present together with his regularly appointed defense counsel and personal interpreter. The prosecution is ready to proceed.

COLONEL HAMBY: You may proceed.

CAPTAIN YARD: Prosecution offers into evidence what has been marked for identification as prosecution's exhibit number 1, being Letter Order, AG 000.5 (5 Dec 45) LS, General Headquarters Supreme Commander for the Allied Powers, dated 5 December 1945, with the subject being "Regulations Governing the Trials of Accused War Criminals."

COLONEL HAMBY: There being no objection, the exhibit is admitted into evidence.

(Prosecution's Exhibit No. 1 was received in evidence.)

CAPTAIN YARD: The prosecution submits for incorporation into the records of these proceedings, the following documents:

Paragraph 21 of Special Orders No. 85, Headquarters, United States Army Forces, Western Pacific, dated 12 April 1946.

Letter, dated 13 April 1946 to prosecutor for Commission, with the subject being "Summoning and Swearing Witnesses for Kono Trial" and signed by the President of the Commission.

COLONEL HAMBY: There being no objection, the orders are incorporated into the record of these proceedings.

"RESTRICTED

"HEADQUARTERS

"UNITED STATES ARMY FORCES WESTERN PACIFIC

"Special Orders)
No.....85)

"APO 707

"12 April 1946

"EXTRACT

"21. The following officers are appointed members of a Military Commission to meet in the City of Manila, Philippine Islands, at the call of the President thereof, for the trial of Takeshi KONO, accused war criminal. (Authority: 1st Ind. GHQ, AFPAC, APO 500, 1 April 1946, to letter GHQ, SCAP, file AG 000.5 (1 April 1946) LS, dated 1 April 1946, subj: 'Trial of Takeshi KONO'):

Col. William R. Hamby	CAV	Pres. & Law Member
Col. John L. Goff	CAC	
Col. Joseph H. Warren	INF	
Lt. Col. John A. Chase	(CMP) FA	
Capt. Jack Ellingson	CMP	

The prosecution will be represented by Capt. William S. Yard, JAGD, Chief Prosecutor; 1st Lt. Addison T. Shepherd, JAGD, Asst. Prosecutor; and 2nd Lt. William E. Murphy, INF, Asst. Prosecutor. The defense will be represented by 1st Lt. Clarence L. Waters, CMP, Chief Defense Counsel, and 2nd Lt. John E. McCullough, TC, Asst. Defense Counsel.

The Commission will follow the provisions of Letter, GHQ, SCAP, dated 5 December 1945, subj: 'Regulations Governing the Trials of Accused War Criminals,' and is authorized to employ or appoint such interpreters, stenographic reporters and other assistants as it shall deem advisable.

The record of trial including any judgment or sentence will be transmitted directly to this headquarters for action by the appointing authority.

BY COMMAND OF LIEUTENANT GENERAL STYER:

"OFFICIAL:

/s/ BENITO MORALES
/t/ BENITO MORALES
Colonel, AGD
Asst Adj Gen.

"J G CHRISTIANSEN
Major General, USA
Deputy Commander and
Chief of Staff

"DISTRIBUTION:
War Crimes (60)

"RESTRICTED"

"MILITARY COMMISSION

Convened by the

COMMANDING GENERAL

United States Army Forces, Western Pacific

"APO 707

13 April 1946

"SUBJECT: Summoning and Swearing Witnesses for KONO Trial

"TO : Prosecutor for Commission

"Pursuant to authority of provisions of Letter, General Headquarters, Supreme Commander for the Allied Powers, 5 December 1945, subject: 'Regulations Governing the Trials of Accused War Criminals,' you are authorized, as prosecutor of cases referred for trial to the Military Commission convened by the Commanding General, United States Army Forces, Western Pacific, by paragraph 21, Special Orders No. 85,

dated 12 April 1946, to issue for this Commission, summons to compel the attendance of witnesses to any such trial and to require such witnesses to bring with them any papers or documents which may be used as evidence in such trial, and to administer oaths or affirmations to witnesses and other persons.

"/s/ W. R. Hamby
/t/ WILLIAM R. HAMBY
Colonel CAV
President of Commission"

CAPTAIN YARD: The prosecution is ready to proceed with the arraignment.

COLONEL HAMBY: The reporters will be sworn.

(Arnold Cohen and William Cohen were duly sworn as the Official Court Reporters.)

COLONEL HAMBY: The interpreters will be sworn.

(T/Sgt. Yoshiaki Ogita, T/Sgt. Roy Kato, Lucy P. Casanovas, Praxedio Villaluz, and Pedro Genoves were duly sworn as the Official Court Interpreters.)

COLONEL HAMBY: The Commission will be sworn.

(Colonel William R. Hamby, CAV, Colonel John L. Goff, CAC, Lieutenant Colonel John A. Chase, (CMP) FA, and Captain Jack Ellingson, CMP, were duly sworn as members of the Commission.)

COLONEL HAMBY: The prosecution will be sworn.

(Captain William S. Yard, JAGD, 1st Lieutenant Addison T. Shepherd, JAGD, and 2nd Lieutenant William E. Murphy, INF, were duly sworn as members of the prosecution.)

CAPTAIN YARD: A certified copy of the charge and specifications against Takeshi Kono, together with the

true and complete translation thereof in Japanese, were served upon Takeshi Kono by Addison T. Shepherd, 1st Lieutenant, JAGD, 10 April 45, at the High Commissioner's Residence, Manila, P. I.

COLONEL HAMBY: The rights of the accused as set forth in paragraph 5b of letter dated 5 December 1945, General Headquarters, Supreme Commander for the Allied Powers, entitled "Regulations Governing the Trials of Accused War Criminals" heretofore admitted into evidence, will be read and explained.

CAPTAIN YARD: Rights of the accused. The accused shall be entitled:

(1) To have in advance of trial a copy of the charges and specifications clearly worded so as to apprise the accused of each offense charged.

(2) To be represented, prior to and during trial by counsel appointed by the convening authority or counsel of his own choice, or to conduct his own defense.

(3) To testify in his own behalf and have his counsel present relevant evidence at the trial in support of his defense, and cross-examine each adverse witness who personally appears before the Commission

(4) To have the substance of the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them.

Does the accused desire to have the rights of the accused read to him in Japanese?

LIEUTENANT MC CULLOUGH: It is not necessary at this time as they have been previously read to him out of court.

COLONEL HAMBY: The provisions of subsection 1 have been complied with, it appearing that a certified copy of the charge and specifications, together with a true and complete translation thereof, were served upon the accused 10 April 1946.

Whom does the accused desire to introduce as defense counsel?

LIEUTENANT MC CULLOUGH: Lieutenant Clarence L. Waters, Corps of Military Police, and Lieutenant John E. McCullough, Transportation Corps.

COLONEL HAMBY: Does the accused wish to have the charge and specifications, the proceedings, and documentary evidence translated to him?

LIEUTENANT MC CULLOUGH: The accused will waive that unless specifically requested during the course of the trial.

COLONEL HAMBY: The charge and specifications will be read to the accused.

CAPTAIN YARD: (Reading):

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWER

Before the MILITARY COMMISSION convened by the COMMANDING GENERAL United States Army Forces, Western Pacific	)	UNITED STATES OF AMERICA -vs- Takeshi KONO

CHARGE

That Takeshi KONO, then a Lieutenant General of the Imperial Japanese Army, did, on the dates and at the places set forth in the Specifications hereto attached, unlawfully disregard and fail to discharge his duties in controlling the operations of members of his command by permitting them to commit brutal atrocities and other high crimes against the people of the United States and the Philippines; and he, Takeshi KONO, thereby violated the laws of war.

SPECIFICATIONS

1. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Ticongcahoy, Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 14 unarmed, noncombatant Filipino civilians, including Buenvenido AZUELO, in violation of the laws of war.

2. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Progreso, Ajuy, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 42 unarmed, noncombatant Filipino civilians, including Domini BONIFACIO, Felicitas POSADAS and Clemente POSADAS, in violation of the laws of war.

3. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill Paulino BORRA, in violation of the laws of war.

4. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Samponongbolo, Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 12 unarmed, noncombatant Filipino civilians, including Basilio POSADAS and a Chinese nicknamed "Iniong", in violation of the laws of war.

SPECIFICATIONS

1. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Ticongcahoy, Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 14 unarmed, noncombatant Filipino civilians, including Buenvenido AZUELO, in violation of the laws of war.

2. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Progreso, Ajuy, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 42 unarmed, noncombatant Filipino civilians, including Domini BONIFACIO, Felicitas POSADAS and Clemente POSADAS, in violation of the laws of war.

3. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill Paulino BORRA, in violation of the laws of war.

4. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Samponongbolo, Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 12 unarmed, noncombatant Filipino civilians, including Basilio POSADAS and a Chinese nicknamed "Iniong", in violation of the laws of war.

5. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Ticongcahoy, Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 60 unarmed, noncombatant Filipino civilians, in violation of the laws of war.

6. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at barrio Agbobotc, Ajuy, Iloilo, Philippines unlawfully permit members of the Imperial Japanese Army then under his command to kill 2 unarmed, noncombatant civilians, including a Chinese named AKAW, in violation of the laws of war.

7. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Maligayligay, Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 84 unarmed, noncombatant civilians, including Jose CAPACILLO and Porfirio CAPACILLO, in violation of the laws of war.

8. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Samponongbolo Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 60 unarmed, noncombatant civilians, in violation of the laws of war.

9. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near Ajuy, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 22 unarmed, noncombatant civilians, including Aurelio ARTACHO and Crescencio TUPAZ, in violation of the laws of war.

10. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Cibato, Dumarao, Capiz, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 100 unarmed, noncombatant civilians, including Jose ROMOALDO, Mrs. Jose ROMOALDO and Mariano ROMOALDO, in violation of the laws of war.

11. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Nabitasan, Ajuy, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 4 unarmed, noncombatant civilians, including Deogracias VILLARUZ and Nicolas AGOTAYA, in violation of the laws of war.

12. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, near barrio Gubaton, Ajuy, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 20 unarmed, noncombatant civilians, including Jaymo DURIN, Juanito DURIN and Claudio HOMICILLADA, in violation of the laws of war.

13. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 20 unarmed, noncombatant civilians, in violation of the laws of war.

14. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Maligay-ligay, Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 40 unarmed, noncombatant civilians, in violation of the laws of war.

15. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Sampo-nongbolo, Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to brutally mistreat and to kill about 12 unarmed, noncombatant civilians, including Coronacion DEZA, in violation of the laws of war.

16. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Alagin-gay, Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to torture and brutally mistreat an unascertained number of civilians and to kill about 8 unarmed, noncombatant civilians, in violation of the laws of war.

17. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Calamingan, Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 40 unarmed, noncombatant civilians, including Manuelita de IMPROGO and Leticia IMPROGO, in violation of the laws of war.

18. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near sitio Cadagmayan, Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to torture, brutually mistreat and kill about 36 unarmed, noncombatant civilians, including Lazaro ARDEMIL, Justa BERTASO and Aurora SANTO, in violation of the laws of war.

19. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near Passi, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 150 unarmed, noncombatant civilians, in violation of the laws of war.

20. In that Takeshi KONO, in the month of September 1943, and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Jimomomua, Passi, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill Mariano YAP and 4 members of his family, in violation of the laws of war.

21. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Jinomoma, Passi, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill an unascertained number of unarmed, noncombatant civilians, including one BALLEZ, in violation of the laws of war.

22. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, near Ajuy, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 26 unarmed, noncombatant civilians, in violation of the laws of war.

23. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near Madarag, Passi, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 3 unarmed, noncombatant civilians, in violation of the laws of war.

24. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Nueva Invencion, Barotac Viejo, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 50 unarmed, noncombatant civilians, in violation of the laws of war.

25. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of

America, its allies and Japan, did, at or near barrio Maligay-ligay, Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 100 unarmed, noncombatant civilians, in violation of the laws of war.

26. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Paquan, Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 6 unarmed, noncombatant civilians, in violation of the laws of war.

27. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, near Ajuy, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 50 unarmed, noncombatant civilians, in violation of the laws of war.

28. In that Takeshi KONO, in the month of September 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near Sara, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill 2 unarmed, noncombatant civilians, in violation of the laws of war.

29. In that Takeshi KONO, in the month of October 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near Batan, Capiz, Philippines, unlawfully permit members of the Imperial Japanese

Army then under his command to kill about 100 unarmed, noncombatant civilians and to brutally torture and mistreat an unascertained number of unarmed, noncombatant civilians, in violation of the laws of war.

30. In that Takeshi KONO, in the month of October 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near Altavas, Capiz, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 40 unarmed, noncombatant civilians, in violation of the laws of war.

31. In that Takeshi KONO, in the month of October 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near Balete, Capiz, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 100 unarmed, noncombatant civilians, in violation of the laws of war.

32. In that Takeshi KONO, in the month of November 1943 and during a time of war between the United States of America, its allies and Japan, did, in the mountains near Despojols, Tablas Islands, Romblon Province, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill one unidentified noncombatant civilian, in violation of the laws of war.

33. In that Takeshi KONO, in the month of November 1943 and during a time of war between the United States of America, its allies and Japan, did, in the mountains near Despojols, Tablas Islands, Romblon Province, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to brutally mistreat and torture an unidentified noncombatant civilian, in violation of the laws of war.

34. In that Takeshi KONO, in the month of October 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near Banga, Capiz, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 300 unarmed, non-combatant civilians, in violation of the laws of war.

35. In that Takeshi KONO, in October and November 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near Libacao and in the mountains near Libacao, Capiz, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill an unascertained number of unarmed, noncombatant civilians, in violation of the laws of war.

36. In that Takeshi KONO, in the month of December 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near Camp Hopevale, Tapaz, Capiz, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to brutally torture, mistreat and kill

about 17 unarmed, noncombatant citizens of the United States of America, including Dr. and Mrs. Francis H. Rose, Rev. and Mrs. Earle F. Rounds, Douglas Rounds, Mrs. J. H. Covell and Miss Dorothy A. Dowell, in violation of the laws of war.

37. In that Takeshi KONO, in the month of August 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Parara, Tigbauan, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to torture, brutally mistreat and kill about 28 unarmed, noncombatant civilians, including one TRISTEZA and Vicente MEDESMA, in violation of the laws of war.

38. In that Takeshi KONO, in the month of August 1943 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Buenavista, Leon, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 10 unarmed, noncombatant civilians, including Cirila JAGUREN and Maximo CAGOD, in violation of the laws of war.

39. In that Takeshi KONO, in the month of April 1944 and during a time of war between the United States of America, its allies and Japan, did, at barrio Hamog, Leon, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command, to kill an unascertained number of unarmed, noncombatant civilians, including Maria SABORNIDO and Sabino TUNAY, in violation of the laws of war.

40. In that Takeshi KONO, in the month of May 1944, and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Maringyan, Miagao, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 7 unarmed, noncombatant civilians, including Bernardo NOBLEZADA and attempt to kill Jose MONTALBAN, in violation of the laws of war.

41. In that Takeshi KONO, in the month of January 1944 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio San Jose, Miagao, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 12 unarmed, noncombatant civilians, including Salvacion FORTES and to attempt to kill about 3 unarmed, noncombatant civilians, including Bernardita NAMAN, in violation of the laws of war.

42. In that Takeshi KONO, in the month of March 1944 and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Mat-y, Miagao, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 35 unarmed, noncombatant civilians, including Maria MOYONG, Jose ROMANO, Anastacio NUFABLE and Federico NUFABLE and to attempt to kill about 9 unarmed, noncombatant civilians, including Adela ESLASIN and Remedios NACANAYNAY, in violation of the laws of war.

42. In that Takeshi KONO, in the month of May 1944 and during a time of war between the United States

of America, its allies and Japan, did, at or near barrio Paro-on, Miagao, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 11 unarmed, noncombatant civilians, including Lucia MAULIT and Tomas NOVICO, in violation of the laws of war.

44. In that Takeshi KONO, in the month of April and during a time of war between the United States of America, its allies and Japan, did, at or near barrio Cagbang, Miagao, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill about 3. unarmed, noncombatant civilians, including Valeriano FACTO and to attempt to kill Guillermo FORTUGANA, in violation of the laws of war.

45. In that Takeshi KONO, in the years 1943 and 1944 and during a time of war between the United States of America, its allies and Japan, did, at or near the Iloilo High School, Iloilo, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to kill an unascertained number of unarmed, noncombatant civilians, in violation of the laws of war.

46. In that Takeshi KONO, in the month of May 1944 and during a time of war between the United States of America, its allies and Japan, did at Buenavista, Guimaras Island, Philippines, unlawfully permit members of the Imperial Japanese Army then under his command to brutally torture, mistreat and kill Edison GARGANERA, in violation of the laws of war.

47. In that Takeshi KONO, in the month of December 1944 and during a time of war between the United States of America, its allies and Japan,did,at or near barrio Supang, Buenavista, Guimaras Island, Philippines,unlawfully permit

members of the Imperial Japanese Army then under his command to brutally torture, mistreat and kill an unascertained number of unarmed, noncombatant civilians,including Demetrio HOYAM, in violation of the laws of war.

48. In that Takeshi KONO, in the month of October or November 1944 and during a time of war between the United States of America,its allies and Japan,did, at or near Arevalo,Iloilo,Philippines,unlawfully permit members of the Imperial Japanese Army then under his command to kill about 4 unarmed, noncombatant civilians,including Siting PARCON and Eriberto PAVILLAR, in violation of the laws of war.

49. In that Takeshi KONO,in the month of April 1945 and during a time of war between the United States of America, its allies and Japan,did,at or near sitio. San Juan,Silay, Negros Occidental,Philippines,unlawfully permit members of the Imperial Japanese Army then under his command to torture, brutally mistreat and kill an unidentified member of the Armed Forces of the United States, then a disarmed prisoner of war,in violation of the laws of war.

Dated: 27 March 1946.

/s/ Alva C. Carpenter
/t/ ALVA C. CARPENTER
Colonel, JAGD
United States Army

AFFIDAVIT

Before me personally appeared the above-named accuser this 27th day of March 1946,and made oath that he is a person subject to military law and that he personally signed the foregoing charge,and further that he has investigated the matters set forth in the charge,and that it is true in fact,to the best of his knowledge and belief.

/s/ Manning D. Webster
/t/ MANNING D. WEBSTER
Captain JAGD AUS

GENERAL HEADQUARTERS
UNITED STATES ARMY FORCES, WESTERN PACIFIC
APO 707

12 April 1946

Referred for trial to Capt. William S. Yard, JAGD, Chief Prosecutor of the Military Commission appointed by paragraph 21, Special Orders No. 85, this Headquarters, 12 April 1946.

By command of Lieutenant General STYER:

J. J. GERHARDT
Colonel, AGD
Adjutant General

I hereby certify that I have served a copy hereof, together with a true and complete translation thereof into Japanese on the above-named accused this 10 day of April 1946.

/s/ Addison T. Shepherd
1st Lt, JAGD

CAPTAIN YARD: The prosecution now introduces for incorporation into the record the charge and specifications which have been read to the accused.

LIEUTENANT MC CULLOUGH: We have no objection to having them incorporated.

COLONEL HAMBY: There being no objection, the charge and specifications are incorporated into the record.

Is the accused now ready to enter his plea?

LIEUTENANT MC CULLOUGH: If the Commission please, before entering the plea on the issue of his innocence or guilt, we desire to present to the Commission for incorporation into the record a motion for a bill of particulars to the charge, for further particulars as to certain specifications and additional specifications, and to strike certain specifications and additional specifications. This is the thirty-two page motion which was submitted to the Commission in conference on 13 April 1946. The prosecution has prepared an answer to that motion which was presented to the Commission for their consideration at the same time. We believe that the motion, together with the answer, are sufficiently clear so that it will not be necessary to make any further argument on that motion at this time. We respectfully request the Commission to consider and to physically incorporate it into the record without reading it.

COLONEL HAMBY: It will be so incorporated.

HEADQUARTERS
UNITED STATES ARMY FORCES, WESTERN PACIFIC
WAR CRIMES COMMISSION

Before the MILITARY COMMISSION convened by the COMMANDING GENERAL United States Army Forces Western Pacific	)	United States of America -vs- TAKESHI KONO

Motions for a Bill of Particulars to the charge, for further particulars as to certain specifications and additional specifications and to strike certain specifications and additional specifications.

To the Honorable Members of said Commission:

Now comes TAKESHI KONO by his duly appointed counsel, and moves:

(1) That the charge as set forth be striken because it does not charge or allege that any brutal atrocities and other high crimes were committed within the knowledge or "scienter" of the accused or that he had knowledge that such alleged crimes and atrocities were committed and condoned them.

(2) That should the Commission deny accused's motion that the charge be stricken, and only if said motion be denied, then accused moves that he be furnished with a bill of particulars to the charge specifically setting forth as follows, to-wit:

(a) What duties of a Lieutenant General of the Japanese Imperial Army he is charged with disregarding and failing to discharge.

(b) How and in what manner he disregarded and failed to discharge the duties referred to in (a) above.

(c) What measures for the control over members of his command, if any, he should have taken and is charged with disregarding or failing to discharge.

(d) What is meant by the phrase "permitting them", and does it allege a crime of commission or a crime of onission.

(e) What law or laws of war he is charged with violating.

(3) That Specifications numbered one through forty-nine, inclusive, be stricken individually and collectively for the following reasons, to-wit:

(a) That each of the said specifications fails to charge that the accused had knowledge that such act or acts as alleged were to be committed and he did not prevent or prohibit such act or acts from being committed or that he knew said act or acts as alleged had been committed and either condoned or failed to punish the perpetration thereof.

(b) That each of the said specifications fails to allege whether the alleged crime of the accused was one of commission or one of omission and therefore fails to furnish the accused with such knowledge of the offense charged against him as to place him on notice of what crime or crimes he is alleged to have committed or what act or acts he is alleged to have failed to perform and thus inhibits and prevents him from preparing a defense.

(c) That each of the said specifications is so vague, indefinite and uncertain that it fails to place

the defendant on notice as to what he stands charged with and thus denies him the right to prepare a defense and to obtain and submit to the Commission defensive evidence and testimony and to promulgate an affirmative defense.

(4) That in the event, and only in the event that the Commission denies the foregoing plea in (3) above that the specifications numbered one through forty-nine, inclusive, be stricken, then the accused prays that he be granted and furnished a bill of particulars in the respects indicated for each of the specifications set forth as follows, to-wit:

Specification 1

(a) The date or dates certain upon which the said offense is alleged to have been perpetrated, for without said date or dates certain the accused is inhibited in organizing his defense, in obtaining and submitting defensive matters and indicia, and in promulgating an affirmative defense.

(b) What is meant by the phrase or words "unlawfully permit" and whether same charges a crime of commission or one of omission because the use of such an uncertain, indefinite and vague phrase or words without details or amplification denies the defendant the right to know with what offense he is charged and prohibits the promulgation or preparation of a defense.

(c) What member or members of the Japanese Imperial Army under the command of the accused actually committed such alleged offense or offenses, and the rank or ranks of said person or persons and the organization or organizations of which he or they belonged.

(d) The definite number of persons alleged to have been the victims of such act or acts, their names, and such other and further identifications as to make certain what person or persons are alleged to have been the victims of such act or acts.

(e) The way, means and manner that was used in carrying out the alleged criminal act or acts as complained of in this specification, if known.

(f) What law or laws of war have been violated by the act or acts complained of in the specification and whether the phrase or words "in violation of the laws of war" refers to an act of commission or to some omission on the part of the accused or whether such phrase or words refer to the act of the actual perpetrators of the alleged crime.

Specification 2

(a) The date or dates certain upon which the said offense is alleged to have been perpetrated, for without said date or dates certain the accused is inhibited in organizing his defense, in obtaining and submitting defensive matters and indicia and in promulgating an affirmative defense.

(b) What is meant by the phrase or words "unlawfully permit" and whether same charges a crime of commission or one of omission because the use of such an uncertain, indefinite and vague phrase or words without details or amplification denies the defendant the right to know with what offense he is charged and prohibits the promulgation or preparation of a defense.

(c) What member or members of the Japanese Imperial Army under the command of the accused actually committed such alleged offense or offenses, and the rank or ranks of said

person or persons and the organization or organizations of which he or they belonged.

(d) The definite number of persons alleged to have been the victims of such act or acts, their names, and such other and further identifications as to make certain what person or persons are alleged to have been the victims of such act or acts.

(e) The way, means and manner that was used in carrying out the alleged criminal act or acts as complained of in this specification, if known.

(f) What law or laws of war have been violated by the act or acts complained of in the specification and whether the phrase or words "in violation of the laws of war" refer to an act of commission or to some omission on the part of the accused or whether such phrase or words refer to the act of the actual perpetrators of the alleged crime.

Specification 3

(a) The date or dates certain upon which the said offense is alleged to have been perpetrated, for without said date or dates certain the accused is inhibited in organizing his defense, in obtaining and submitting defensive matters and indicia, and in promulgating an affirmative defense.

(b) What is meant by the phrase or words "unlawfully permit" and whether same charges a crime of commission or one of omission because the use of such an uncertain, indefinite and vague phrase or words, without details or amplification, denies the defendant the right to know with what offense he is charged and prohibits the promulgation or preparation of a defense.

(c) What member or members of the Japanese Imperial Army under the command of the accused actually committed such alleged offense or offenses, and the rank or ranks of said person or persons and the organization or organizations of which he or they belonged.

(d) The way, means and manner that was used in carrying out the alleged criminal act or acts as complained of in this specification, if known.

(e) What law or laws of war have been violated by the act or acts complained of in the specification and whether the phrase or words "in violation of the laws of war" refer to an act of commission or to some omission on the part of the accused or whether such phrase or words refer to the act of the actual perpetrators of the alleged crime.

Specification 4

(a) The date or dates certain upon which the said offense is alleged to have been perpetrated, for without said date or dates certain the accused is inhibited in organizing his defense, in obtaining and submitting defensive matters and indicia, and in promulgating an affirmative defense.

(b) What is meant by the phrase or words "unlawfully permit" and whether same charges a crime of commission or one of omission because the use of such an uncertain, indefinite and vague phrase or words without details or amplification denies the defendant the right to know with what offense he is charged and prohibits the promulgation or preparation of a defense.

(c) What member or members of the Japanese Imperial Army under the command of the accused actually committed

such alleged offense or offenses, and the rank or ranks of said person or persons and the organization or organizations of which he or they belonged.

(d) The definite number of persons alleged to have been the victims of such act or acts, their names, and such other and further identifications as to make certain what person or persons are alleged to have been the victims of such act or acts.

(e) The way, means and manner that was used in carrying out the alleged criminal act or acts as complained of in this specification, if known.

(f) What law or laws of war have been violated by the act or acts complained of in the specification and whether the phrase or words "in violation of the laws of war" refer to an act of commission or to some omission on the part of the accused or whether such phrase or words refer to the act of the actual perpetrators of the alleged crime.

(g) Such information as to the status of the alleged victim "Iniong" who is alleged to be both a Filipino civilian and a Chinese so as to clear up such status and show whether he was Filipino, Chinese or Chinese mestiza.

Specification 5

(a) The date or dates certain upon which the said offense is alleged to have been perpetrated, for without said date or dates certain the accused is inhibited in organizing his defense, in obtaining and submitting defensive matters and indicia, and in promulgating an affirmative defense.

(b) What is meant by the phrase or words "unlawfully permit" and whether same charges a crime of commission or one of omission

because the use of such an uncertain, indefinite and vague phrase or words without details or amplification denies the defendant the right to know with what offense he is charged and prohibits the promulgation or preparation of a defense.

(c) What member or members of the Japanese Imperial Army under the command of the accused actually committed such alleged offense or offenses, and the rank or ranks of said person or persons and the organization or organizations of which he or they belonged.

(d) The definite number of persons alleged to have been the victims of such act or acts, their names, and such other and further identifications as to make certain what person or persons are alleged to have been the victims of such act or acts.

(e) The way, means and manner that was used in carrying out the alleged criminal act or acts as complained of in this specification, if known.

(f) What law or laws of war have been violated by the act or acts complained of in the specification and whether the phrase or words "in violation of the laws of war" refer to an act of commission or to some omission on the part of the accused or whether such phrase or words refer to the act of the actual perpetrators of the alleged crime.

Specification 6

(a) The date or dates certain upon which the said offense is alleged to have been perpetrated, for without said date or dates certain the accused is inhibited in organizing his defense, in obtaining and submitting defensive matters and indicia, and in promulgating an affirmative defense.

(b) What is meant by the phrase or words "unlawfully permit" and whether same charges a crime of commission or one of omission because the use of such an uncertain, indefinite and vague phrase or words without details or amplification denies the defendant the right to know with what offense he is charged and prohibits the promulgation or preparation of a defense.

(c) What member or members of the Japanese Imperial Army under the command of the accused actually committed such alleged offense or offenses, and the rank or ranks of said person or persons and the organization or organizations of which he or they belonged.

(d) The way, means and manner that was used in carrying out the alleged criminal act or acts as complained of in this specification, if known.

(e) What law or laws of war have been violated by the act or acts complained of in the specification and whether the phrase or words "in violation of the laws of war" refer to an act of commission or to some omission on the part of the accused or whether such phrase or words refer to the act of the actual perpetrators of the alleged crime.

Specification 7

(a) The date or dates certain upon which the said offense is alleged to have been perpetrated, for without said date or dates certain the accused is inhibited in organizing his defense, in obtaining and submitting defensive matters and indicia, and in promulgating an affirmative defense.

(b) What is meant by the phrase or words "unlawfully permit" and whether same charges a crime of commission or one

of omission because the use of such an uncertain, indefinite and vague phrase or words without details or amplification denies the defendant the right to know with what offense he is charged and prohibits the promulgation or preparation of a defense.

(c) What member or members of the Japanese Imperial Army under the command of the accused actually committed such alleged offense or offenses, and the rank or ranks of said person or persons and the organization or organizations of which he or they belonged.

(d) The definite number of persons alleged to have been the victims of such act or acts, their names, and such other and further identifications as to make certain what person or persons are alleged to have been the victims of such act or acts.

(e) The way, means and manner that was used in carrying out the alleged criminal act or acts as complained of in this specification, if known.

(f) What law or laws of war have been violated by the act or acts complained of in the specification and whether the phrase or words "in violation of the laws of war" refers to an act of commission or to some omission on the part of the accused or whether such phrase or words refers to the act of the actual perpetrators of the alleged crime.

Specification 8

(a) The date or dates certain upon which the said offense is alleged to have been perpetrated, for without said date or dates certain the accused is inhibited in organizing his defense, in obtaining and submitting defensive matters and indicia, and in promulgating an affirmative defense.

(b) What is meant by the phrase or words "unlawfully permit" and whether same charges a crime of commission or one of omission because the use of such an uncertain, indefinite and vague phrase or words without details or amplification denies the defendant the right to know with what offense he is charged and prohibits the promulgation or preparation of a defense.

(c) What member or members of the Japanese Imperial Army under the command of the accused actually committed such alleged offense or offenses, and the rank or ranks of said person or persons and the organization or organizations of which he or they belonged.

(d) The definite number of persons alleged to have been the victim of such act or acts, their names, and such other and further identifications as to make certain what person or persons are alleged to have been the victims of such act or acts.

(e) The way, means and manner that was used in carrying out the alleged criminal act or acts as complained of in this specification, if known.

(f) What law or laws of war have been violated by the act or acts complained of in the specification and whether the phrase or words "in violation of the laws of war" refers to an act of commission or to some omission on the part of the accused or whether such phrase or words refers to the act of the actual perpetrators of the alleged crime.

Specification 9

(a) The date or dates certain upon which the said offense is alleged to have been perpetrated, for without said date or dates certain the accused is inhibited in organizing his defense,

in obtaining and submitting defensive matters and indicia, and in promulgating an affirmative defense.

(b) What is meant by the phrase or words "unlawfully permit" and whether same charges a crime of commission or one of omission because the use of such an uncertain, indefinite and vague phrase or words without details or amplification denies the defendant the right to know with what offense he is charged and prohibits the promulgation or preparation of a defense.

(c) What member or members of the Japanese Imperial Army under the command of the accused actually committed such alleged offense or offenses, and the rank or ranks of said person or persons and the organization or organizations of which he or they belonged.

(d) The definite number of persons alleged to have been the victims of such act or acts, their names, and such other and further identifications as to make certain what person or persons are alleged to have been the victims of such act or acts.

(e) The way, means and manner that was used in carrying out the alleged criminal act or acts as complained of in this specification, if known.

(f) What law or laws of war have been violated by the act or acts complained of in the specification and whether the phrase or words "in violation of the laws of war" refers to an act of commission or to some omission on the part of the accused or whether such phrase or words refers to the act of the actual perpetrators of the alleged crime.

Specification 10

(a) The date or dates certain upon which the said offense is alleged to have been perpetrated, for without said date or

dates certain the accused is inhibited in organizing his defense, in obtaining and submitting defensive matters and indicia, and in promulgating an affirmative defense.

(b) What is meant by the phrase or words "unlawfully permit" and whether same charges a crime of commission or one of omission because the use of such an uncertain, indefinite and vague phrase or words without details or amplification denies the defendant the right to know with what offense he is charged and prohibits the promulgation or preparation of a defense.

(c) What member or members of the Japanese Imperial Army under the command of the accused actually committed such alleged offense or offenses, and the rank or ranks of said person or persons and the organization or organizations of which he or they belonged.

(d) The definite number of persons alleged to have been the victims of such act or acts, their names, and such other and further identifications as to make certain what person or persons are alleged to have been the victims of such act or acts.

(e) The way, means and manner that was used in carrying out the alleged criminal act or acts as complained of in this specification, if known.

(f) What law or laws of war have been violated by the act or acts complained of in the specification and whether the phrase or words "in violation of the laws of war" refers to an act of commission or to some omission on the part of the accused or whether such phrase or words refers to the act of the actual perpetrators of the alleged crime.

Specification 11

(a) The date or dates certain upon which the said offense is alleged to have been perpetrated, for without said date or

dates certain the accused is inhibited in organizing his defense, in obtaining and submitting defensive matters and indicia, and in promulgating an affirmative defense.

(b) What is meant by the phrase or words "unlawfully permit" and whether same charges a crime of commission or one of omission because the use of such an uncertain, indefinite and vague phrase or words without details or amplification denies the defendant the right to know with what offense he is charged and prohibits the promulgation or preparation of a defense.

(c) What member or members of the Japanese Imperial Army under the command of the accused actually committed such alleged offense or offenses, and the rank or ranks of said person or persons and the organization or organizations of which he or they belonged.

(d) The definite number of persons alleged to have been the victims of such act or acts, their names, and such other and further identifications as to make certain what person or persons are alleged to have been the victims of such act or acts.

(e) The way, means and manner that was used in carrying out the alleged criminal act or acts as complained of in this specification, if known.

(f) What law or laws of war have been violated by the act or acts complained of in the specification and whether the phrase or words "in violation of the laws of war" refers to an act of commission or to some omission on the part of the accused or whether such phrase or words refers to the act of the actual perpetrators of the alleged crime.

Specification 12

(a) The date or dates certain upon which the said offense is alleged to have been perpetrated, for without said date or

dates certain the accused is inhibited in organizing his defense, in obtaining and submitting defensive matters and indicia, and in promulgating an affirmative defense.

(b) What is meant by the phrase or words "unlawfully permit" and whether same charges a crime of commission or one of omission because the use of such an uncertain, indefinite and vague phrase or words without details or amplification denies the defendant the right to know with what offense he is charged and prohibits the promulgation or preparation of a defense.

(c) What member or members of the Japanese Imperial Army under the command of the accused actually committed such alleged offense or offenses, and the rank or ranks of said person or persons and the organization or organizations of which he or they belonged.

(d) The definite number of persons alleged to have been the victims of such act or acts, their names, and such other and further identifications as to make certain what person or persons are alleged to have been the victims of such act or acts.

(e) The way, means and manner that was used in carrying out the alleged criminal act or acts as complained of in this specification, if known.

(f) What law or laws of war have been violated by the act or acts complained of in the specification and whether the phrase or words "in violation of the laws of war" refers to an act of commission or to some omission on the part of the accused or whether such phrase or words refers to the act of the actual perpetrators of the alleged crime.

Specification 13

(a) The date or dates certain upon which the said offense is alleged to have been perpetrated, for without said date or

dates certain the accused is inhibited in organizing his defense, in obtaining and submitting defensive matters and indicia, and in promulgating an affirmative defense.

(b) What is meant by the phrase or words "unlawfully permit" and whether same charges a crime of commission or one of omission because the use of such an uncertain, indefinite and vague phrase or words without details or amplification denies the defendant the right to know with what offense he is charged and prohibits the promulgation or preparation of a defense.

(c) What member or members of the Japanese Imperial Army under the command of the accused actually committed such alleged offense or offenses, and the rank or ranks of said person or persons and the organization or organizations of which he or they belonged.

(d) The definite number of persons alleged to have been the victims of such act or acts, their names, and such other and further identifications as to make certain what person or persons are alleged to have been the victims of such act or acts.

(e) The way, means and manner that was used in carrying out the alleged criminal act or acts as complained of in this specification, if known.

(f) What law or laws of war have been violated by the act or acts complained of in the specification and whether the phrase or words "in violation of the laws of war" refers to an act of commission or to some omission on the part of the accused or whether such phrase or words refers to the act of the actual perpetrators of the alleged crime.

Specification 14

(a) The date or dates certain upon which the said offense is alleged to have been perpetrated, for without said date or

dates certain the accused is inhibited in organizing his defense, in obtaining and submitting defensive matters and indicia, and in promulgating an affirmative defense.

(b) What is meant by the phrase or words "unlawfully permit" and whether same charges a crime of commission or one of omission because the use of such an uncertain, indefinite and vague phrase or words without details or amplification denies the defendant the right to know with what offense he is charged and prohibits the promulgation or preparation of a defense.

(c) What member or members of the Japanese Imperial Army under the command of the accused actually committed such alleged offense or offenses, and the rank or ranks of said person or persons and the organization or organizations of which he or they belonged.

(d) The definite number of persons alleged to have been the victims of such act or acts, their names, and such other and further identifications as to make certain what person or persons are alleged to have been the victims of such act or acts.

(e) The way, means and manner that was used in carrying out the alleged criminal act or acts as complained of in this specification, if known.

(f) What law or laws of war have been violated by the act or acts complained of in the specification and whether the phrase or words "in violation of the laws of war" refers to an act of commission or to some omission on the part of the accused or whether such phrase or words refers to the act of the actual perpetrators of the alleged crime.

Specification 15

(a) The date or dates certain upon which the said offense is alleged to have been perpetrated, for without said date or

dates certain the accused is inhibited in organizing his defense, in obtaining and submitting defensive matters and indicia, and in promulgating an affirmative defense.

(b) What is meant by the phrase or words "unlawfully permit" and whether same charges a crime of commission or one of omission because the use of such an uncertain, indefinite and vague phrase or words without details or amplification denies the defendant the right to know with what offense he is charged and prohibits the promulgation or preparation of a defense.

(c) What member or members of the Japanese Imperial Army under the command of the accused actually committed such alleged offense or offenses, and the rank or ranks of said person or persons and the organization or organizations of which he or they belonged.

(d) The definite number of persons alleged to have been the victims of such act or acts, their names, and such other and further identifications as to make certain what person or persons are alleged to have been the victims of such act or acts.

(e) The way, means and manner that was used in carrying out the alleged criminal act or acts as complained of in this specification, if known.

(f) What law or laws of war have been violated by the act or acts complained of in the specification and whether the phrase or words "in violation of the laws of war" refers to an act of commission or to some omission on the part of the accused or whether such phrase or words refers to the act of the actual perpetrators of the alleged crime.

Specification 16

(a) The date or dates certain upon which the said offense is alleged to have been perpetrated, for without said date or

dates certain the accused is inhibited in organizing his defense, in obtaining and submitting defensive matters and indicia, and in promulgating an affirmative defense.

(b) What is meant by the phrase or words "unlawfully permit" and whether same charges a crime of commission or one of omission because the use of such an uncertain, indefinite and vague phrase or words without details or amplification denies the defendant the right to know with what offense he is charged and prohibits the promulgation or preparation of a defense.

(c) What member or members of the Japanese Imperial Army under the command of the accused actually committed such alleged offense or offenses, and the rank or ranks of said person or persons and the organization or organizations of which he or they belonged.

(d) The definite number of persons alleged to have been the victims of such act or acts, their names, and such other and further identifications as to make certain what person or persons are alleged to have been the victims of such act or acts.

(e) The way, means and manner that was used in carrying out the alleged criminal act or acts as complained of in this specification, if known.

(f) What law or laws of war have been violated by the act or acts complained of in the specification and whether the phrase or words "in violation of the laws of war" refers to an act of commission or to some omission on the part of the accused or whether such phrase or words refers to the act of the actual perpetrators of the alleged crime.

Specification 17

(a) The date or dates certain upon which the said offense is alleged to have been perpetrated, for without said date or dates certain the accused is inhibited in organizing his defense, in obtaining and submitting defensive matters and indicia, and in promulgating an affirmative defense.

(b) What is meant by the phrase or words "unlawfully permit" and whether same charges a crime of commission or one of omission because the use of such an uncertain, indefinite and vague phrase or words without details or amplification denies the defendant the right to know with what offense he is charged and prohibits the promulgation or preparation of a defense.

(c) What member or members of the Japanese Imperial Army under the command of the accused actually committed such alleged offense or offenses, and the rank or ranks of said person or persons and the organization or organizations of which he or they belonged.

(d) The definite number of persons alleged to have been the victims of such act or acts, their names, and such other and further identifications as to make certain what person or persons are alleged to have been the victims of such act or acts.

(e) The way, means and manner that was used in carrying out the alleged criminal act or acts as complained of in this specification, if known.

(f) What law or laws of war have been violated by the act or acts complained of in the specification and whether the phrase or words "in violation of the laws of war" refers to an act of commission or to some omission on the part of the accused or

whether such phrase or words refers to the act of the actual perpetrators of the alleged crime.

Specification 18

(a) The date or dates certain upon which the said offense is alleged to have been perpetrated, for without said date or dates certain the accused is inhibited in organizing his defense, in obtaining and submitting defensive matters and indicia, and in promulgating an affirmative defense.

(b) What is meant by the phrase or words "unlawfully permit" and whether same charges a crime of commission or one of omission because the use of such an uncertain, indefinite and vague phrase or words without details or amplification denies the defendant the right to know with what offense he is charged and prohibits the promulgation or preparation of a defense.

(c) What member or members of the Japanese Imperial Army under the command of the accused actually committed such alleged offense or offenses, and the rank or ranks of said person or persons and the organization or organizations of which he or they belonged.

(d) The definite number of persons alleged to have been the victims of such act or acts, their names, and such other and further identifications as to make certain what person or persons are alleged to have been the victims of such act or acts.

(e) The way, means and manner that was used in carrying out the alleged criminal act or acts as complained of in this specification, if known.

(f) What law or laws of war have been violated by the act or acts complained of in the specification and whether the phrase

or words "in violation of the laws of war" refers to an act of commission or to some omission on the part of the accused or whether such phrase or words refers to the act of the actual perpetrators of the alleged crime.

Specification 19

(a) The date or dates certain upon which the said offense is alleged to have been perpetrated, for without said date or dates certain the accused is inhibited in organizing his defense, in obtaining and submitting defensive matters and indicia, and in promulgating an affirmative defense.

(b) What is meant by the phrase or words "unlawfully permit" and whether same charges a crime of commission or one of omission because the use of such an uncertain, indefinite and vague phrase or words without details or amplification denies the defendant the right to know with what offense he is charged and prohibits the promulgation or preparation of a defense.

(c) What member or members of the Japanese Imperial Army under the command of the accused actually committed such alleged offense or offenses, and the rank or ranks of said person or persons and the organization or organizations of which he or they belonged.

(d) The definite number of persons alleged to have been the victims of such act or acts, their names, and such other and further identifications as to make certain what person or persons are alleged to have been the victims of such act or acts.

(e) The way, means and manner that was used in carrying out the alleged criminal act or acts as complained of in this specification, if known.

(f) What law or laws of war have been violated by the act or acts complained of in the specification and whether the phrase

or words "in violation of the laws of war" refers to an act of commission or to some omission on the part of the accused or whether such phrase or words refers to the act of the actual perpetrators of the alleged crime.

Specification 20

(a) The date or dates certain upon which the said offense is alleged to have been perpetrated, for without said date or dates certain the accused is inhibited in organizing his defense, in obtaining and submitting defensive matters and indicia, and in promulgating an affirmative defense.

(b) What is meant by the phrase or words "unlawfully permit" and whether same charges a crime of commission or one of omission because the use of such an uncertain, indefinite and vague phrase or words without details or amplification denies the defendant the right to know with what offense he is charged and prohibits the promulgation or preparation of a defense.

(c) What member or members of the Japanese Imperial Army under the command of the accused actually committed such alleged offense or offenses, and the rank or ranks of said person or persons and the organization or organizations of which he or they belonged.

(d) The names of the members of the family of Mariano Yap.

(e) The way, means and manner that was used in carrying out the alleged criminal act or acts as complained of in this specification, if known.

(f) What law or laws of war have been violated by the act or acts complained of in the specification and whether the phrase or words "in violation of the laws of war" refers to an act of commission or to some omission on the part of the accused or

whether such phrase or words refers to the act of the actual perpetrators of the alleged crime.

Specification 21

(a) The date or dates certain upon which the said offense is alleged to have been perpetrated, for without said date or dates certain the accused is inhibited in organizing his defense, in obtaining and submitting defensive matters and indicia, and in promulgating an affirmative defense.

(b) What is meant by the phrase or words "unlawfully permit" and whether same charges a crime of commission or one of omission because the use of such an uncertain, indefinite and vague phrase or words without details or amplification denies the defendant the right to know with what offense he is charged and prohibits the promulgation or preparation of a defense.

(c) What member or members of the Japanese Imperial Army under the command of the accused actually committed such alleged offense or offenses, and the rank or ranks of said person or persons and the organization or organizations of which he or they belonged.

(d) The definite number of persons alleged to have been the victims of such act or acts, their names, and such other and further identifications as to make certain what person or persons are alleged to have been the victims of such act or acts.

(e) The way, means and manner that was used in carrying out the alleged criminal act or acts as complained of in this specification, if known.

(f) What law or laws of war have been violated by the act or acts complained of in the specification and whether the phrase

or words "in violation of the laws of war" refers to an act of commission or to some omission on the part of the accused or whether such phrase or words refers to the act of the actual perpetrators of the alleged crime.

Specification 22

(a) The date or dates certain upon which the said offense is alleged to have been perpetrated, for without said date or dates certain the accused is inhibited in organizing his defense, in obtaining and submitting defensive matters and indicia, and in promulgating an affirmative defense.

(b) What is meant by the phrase or words "unlawfully permit" and whether same charges a crime of commission or one of omission because the use of such an uncertain, indefinite and vague phrase or words without details or amplification denies the defendant the right to know with what offense he is charged and prohibits the promulgation or preparation of a defense.

(c) What member or members of the Japanese Imperial Army under the command of the accused actually committed such alleged offense or offenses, and the rank or ranks of said person or persons and the organization or organizations of which he or they belonged.

(d) The definite number of persons alleged to have been the victims of such act or acts, their names, and such other and further identifications as to make certain what person or persons are alleged to have been the victims of such act or acts.

(e) The way, means and manner that was used in carrying out the alleged criminal act or acts as complained of in this specification, if known.

(f) What law or laws of war have been violated by the act or acts complained of in the specification and whether the phrase or words "in violation of the laws of war" refers to an act of commission or to some omission on the part of the accused or whether such phrase or words refers to the act of the actual perpetrators of the alleged crime.

Specification 23

(a) The date or dates certain upon which the said offense is alleged to have been perpetrated, for without said date or dates certain the accused is inhibited in organizing his defense, in obtaining and submitting defensive matters and indicia, and in promulgating an affirmative defense.

(b) What is meant by the phrase or words "unlawfully permit" and whether same charges a crime of commission or one of omission because the use of such an uncertain, indefinite and vague phrase or words without details or amplification denies the defendant the right to know with what offense he is charged and prohibits the promulgation or preparation of a defense.

(c) What member or members of the Japanese Imperial Army under the command of the accused actually committed such alleged offense or offenses, and the rank or ranks of said person or persons and the organization or organizations of which he or they belonged.

(d) The definite number of persons alleged to have been the victims of such act or acts, their names, and such other and further identifications as to make certain what person or persons are alleged to have been the victims of such act or acts.

(e) The way, means and manner that was used in carrying out the alleged criminal act or acts as complained of in this specification, if known.

(f) What law or laws of war have been violated by the act or acts complained of in the specification and whether the phrase or words "in violation of the laws of war" refers to an act of commission or to some omission on the part of the accused or whether such phrase or words refers to the act of the actual perpetrators of the alleged crime.

Specification 24

(a) The date or dates certain upon which the said offense is alleged to have been perpetrated, for without said date or dates certain the accused is inhibited in organizing his defense in obtaining and submitting defensive matters and indicia, and in promulgating an affirmative defense.

(b) What is meant by the phrase or words "unlawfully permit" and whether same charges a crime of commission or one of omission because the use of such an uncertain, indefinite and vague phrase or words without details or amplification denies the defendant the right to know with what offense he is charged and prohibits the promulgation or preparation of a defense.

(c) What member or members of the Japanese Imperial Army under the command of the accused actually committed such alleged offense or offenses, and the rank or ranks of said person or persons and the organization or organizations of which he or they belonged.

(d) The definite number of persons alleged to have been the victims of such act or acts, their names, and such other and

further identifications as to make certain what person or persons are alleged to have been the victims of such act or acts.

(e) The way, means and manner that was used in carrying out the alleged criminal act or acts as complained of in this specification, if known.

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Specification 48

(a) The date or dates certain upon which the said offense is alleged to have been perpetrated, for without said date or dates certain the accused is inhibited in organizing his defense, in obtaining and submitting defensive matters and indicia, and in promulgating an affirmative defense.

(b) What is meant by the phrase or words "unlawfully permit" and whether same charges a crime of commission or one of omission because the use of such an uncertain, indefinite and vague phrase or words without details or amplification denies the defendant the right to know with what offense he is charged and prohibits the promulgation or preparation of a defense.

(c) What member or members of the Japanese Imperial Army under the command of the accused actually committed such alleged offense or offenses, and the rank or ranks of said person or persons and the organization or organizations of which he or they belonged.

(d) The definite number of persons alleged to have been the victims of such act or acts, their names, and such other and further identifications as to make certain what person or persons are alleged to have been the victims of such act or acts.

(e) The way, means and manner that was used in carrying out the alleged criminal act or acts as complained of in this specification, if known.

(f) What law or laws of war have been violated by the act or acts complained of in the specification and whether the phrase or words "in violation of the laws of war" refers to an act of commission or to some omission on the part of the accused or whether such phrase or words refers to the act of the actual perpetrators of the alleged crime.

Specification 49

(a) The date or dates certain upon which the said offense is alleged to have been perpetrated, for without said date or dates certain the accused is inhibited in organizing his defense, in obtaining and submitting defensive matters and indicia, and in promulgating an affirmative defense.

(b) What is meant by the phrase or words "unlawfully permit" and whether same charges a crime of commission or one of omission because the use of such an uncertain, indefinite and vague phrase or words without details or amplification denies the defendant the right to know with what offense he is charged and prohibits the promulgation or preparation of a defense.

(c) What member or members of the Japanese Imperial Army under the command of the accused actually committed such alleged offense or offenses, and the rank or ranks of said person or persons and the organization or organizations of which he or they belonged.

(d) The way, means and manner that was used in carrying out the alleged criminal act or acts as complained of in this specification, if known.

(e) What law or laws of war have been violated by the act or acts complained of in the specification and whether the phrase or words "in violation of the laws of war" refers to an act of commission or to some omission on the part of the accused or whether such phrase or words refers to the act of the actual perpetrators of the alleged crime.

(s) Clarence L. Waters
CLARENCE L. WATERS
1st Lt., CMP
Defense Counsel

(s) John E. McCullough
JOHN E. McCULLOUGH
2d Lt., TC
Defense Counsel

A CERTIFIED TRUE COPY:

(s) Douglas E. Allis
DOUGLAS E. ALLIS
1st Lt., INF

CAPTAIN YARD: May it please the Commission, the prosecution at this time offers for incorporation into the record of these proceedings its answer to the defense's motion for a bill of particulars to the charge, for further particulars as to certain specifications and additional specifications, and to strike certain specifications and additional specifications. We join with counsel for the defense in the suggestion which it has made to the Commission

COLONEL HAMBY: It will be so incorporated.

HEADQUARTERS
UNITED STATES ARMY FORCES, WESTERN PACIFIC
WAR CRIMES COMMISSION

Before the MILITARY COMMISSION convened by the COMMANDING GENERAL United States Army Forces Western Pacific	)	United States of America vs TAKESHI KONO

Answer to Defense Motions for a Bill of Particulars to the Charge, for further Particulars as to certain Specifications and additional Specifications and to strike certain Specifications and additional Specifications.

To the Honorable Members of Said Commission:

The answer of the United States Government to the above mentioned motions in the above captioned case are as follows:

In answer to Paragraph (1): We move that the motion of the defendant therein be denied on the grounds that the charge does set forth a violation of the laws of war in that the gist of the charge is an unlawful breach of duty by the accused as a commanding officer to control the operations of the members of his command by "permitting them to commit" the atrocities specified.

In the case against Tomoyuki Yamashita the Supreme Court of the United States held when discussing the sufficiency of a charge which is almost identical with the one in the instant case:

> "It is evident that the conduct of military operations by troops whose excesses are unrestrained by the orders or efforts of their commander would almost certainly result in violations which it is the purpose

of the law of war to prevent. Its purpose to protect civilian populations and prisoners of war from brutality would largely be defeated if the commander of an invading army could with impunity neglect to take reasonable measures for their protection. Hence the law of war presupposes that its violation is to be avoided through the control of the operations of war by commanders who are to some extent responsible for their subordinates."

It is clear therefore that Takeshi Kono must be tried by this Commission upon the allegations set forth in the charge against him.

If the evidence presented by the prosecution supports the specifications to the charge it will have proven the commission of widespread and prolonged atrocities following such a pattern that the accused in the proper exercise of control as the commanding officer of the involved Japanese forces knew or should have known that the offenses are committed. Therefore the matter of knowledge is improperly raised at this point in these proceedings but should follow the government's case at which time it will be the duty of the Commission to determine whether as stated above the offenses were committed in such a manner, over such a prolonged period of time, that if the accused says he did not know that admission in and of itself will support the charge that he failed to exercise proper control as a commanding officer.

We move that the motion of the defendant made in Paragraph (2) be denied for the following reasons:

In answer to Paragraph (2)a: We believe that the charge is quite clear as to what duties the accused is charged with disregarding and failing to discharge. He is charged with failure to exercise control over his troops. No one will deny that a military commander is under the duty to exercise control over his troops. This is a first principle which distinguishes an army from a mob. It is a precept as old as armies themselves. For the commander to deny that he has control over his troops is for him to deny he has an army in the first place.

In answer to Paragraph (2)b: We contend that the allegations in the 49 specifications adequately show "how and in what manner he disregarded and failed to discharge the duties."

In answer to Paragraph (2)c: We say it is a duty and a responsibility on the part of the troop commander to keep informed of the actions of his troops. It is a fundamental doctrine of basic military discipline that the commander keep himself informed of the conduct of his troops. He cannot shift the responsibility of control to his staff or subordinate commanders. His failure to exercise due diligence in his important function of command will rapidly result in the disintegration of his military command into mob violence. This exercise of command control involves a high degree of diligence, but armies are not toys but are dangerous instruments, which, as history has carefully demonstrated, will run rampant over innocent harmless people of conquered territory unless prevented by the control of their commander.

In answer to Paragraph (2)d: First, a quotation from Webster's Collegiate Dictionary (1943)

> "Permit (1) to tolerate: to <u>consent</u> to: (2) to grant (one) license or liberty: to <u>authorize</u>."

It's antonyms, according to the same authority:

> "forbid, <u>prohibit</u>"
> (Underlining supplied)

Our charge is that the accused failed to control his troops and permitted them to commit atrocities. The "commission" of atrocities is clearly a war crime. The act of a commander, who is under a duty to <u>prevent</u> the commission of such atrocities, in <u>permitting</u> them, makes himself a party to them. Whether they be crimes of omission or commission is immaterial.

In answer to Paragraph (2)e: We simply say that the Specifications are plain enough in their wording to apprise the defendant that he is being tried for murder and the brutal mistreatment of American and Filipino civilians.

We move that the motion of the defendant made in Paragraph (4) be denied for the following reasons:

Sub-paragraphs (a), (b), (c), (d), (e) and (f) of Paragraph (4) contains the arguments generally used by the defendant in his motion covering Specifications 1 through 49.

As to his request in Paragraph (4) (a) we believe the same to be unreasonable in view of the fact that most of the atrocities alleged in our Specifications took place more than 2 years ago. In each Specification we have alleged the month and the year, in most specifications we are unable to do more. The fact that a day certain is not alleged should

not hinder the defendant in preparing his defense.

The request in Paragraph (4) (b) we believe is answered by our arguments against defendant's motion in paragraphs (2) (d) and (2) (e).

The request in Paragraph (4) (c) we contend is immaterial in view of the fact that we have alleged in the Specifications that the atrocity therein was committed by members of his command.

The request in Paragraph (4) (d) is unreasonable in view of the fact that we have alleged an approximate number of persons killed and in most specifications we have named at least 2 of the victims.

The request in Paragraph (4) (e) is a matter of proof.

The request in Paragraph (4) (f) we believe is answered by our arguments against defendant's motion in Paragraph (2) (e).

All of the Specifications give the defendant ample information to enable him to fully understand the crimes with which he is charged and to prepare his defense.

> "It would seem that the Bill of Particulars need only specify the nature of the crime or crimes for which the defendant is to be tried with sufficient clarity that he may prepare whatever defense he can offer. There is evidently no need to state in detail the manner in which the alleged acts violate specific provisions of International Law, the Rules of Land Warfare, or other applicable provisions. There is the further danger that an overly detailed Bill of Particulars might be

construed as a limitation on the matters which could be proved at the trial." (49 Corpus Juris Section 1193)

/s/ William S. Yard
/t/ WILLIAM S. YARD
Capt. JAGD

/s/ Addison T. Shepherd
/t/ ADDISON T. SHEPHERD
1st Lt. JAGD

/s/ William E. Murphy
/t/ WILLIAM E. MURPHY
2nd Lt. INF

COLONEL HAMBY: The Commission will retire to consider the motion.

(The Commission retired for executive session.)

COLONEL HAMBY: The motion for the defense counsel is denied.

LIEUTENANT MC CULLOUGH: If the Commission please, the accused is now ready to enter his plea as to his guilt or innocence.

COLONEL HAMBY: Takeshi Kono, at this time the Commission will hear your plea to the charge and specifications which have been read to you. You may plead Guilty or Not Guilty.

THE ACCUSED: (Through Interpreter Ogita): I plead Not Guilty.

COLONEL HAMBY: Is the prosecution ready to proceed with the trial?

CAPTAIN YARD: Yes, sir.

COLONEL HAMBY: Is the defense ready to proceed with the trial?

LIEUTENANT MC CULLOUGH: Sir, it is.

COLONEL HAMBY: The prosecution will make its opening statement.

CAPTAIN YARD: May it please the Commission, the prosecution in the case against Takeshi Kono is faced with a serious and most unpleasant mission. This accused is charged with having unlawfully disregarded and failed to discharge his duties as a high-ranking Japanese officer in controlling the operations of the members of his command by permitting them to commit brutal atrocities and other high crimes against unarmed, noncombatant civilians.

In support of the charge and specifications we will present evidence that will resolve itself into a story of murder -- mass murder -- shocking and horrifying almost beyond the possibility of comprehension.

Kono is charged with command responsibility for the numerous atrocities specified against him. Prosecution will show that it was his men or those responsible to his subordinate commanders that committed these crimes against humanity. The theory of command responsibility is not a new one. It was well explained recently in the majority opinion of the Supreme Court of the United States in the case against Yamashita. There it was stated:

> "It is evident that the conduct of military operations by troops whose excesses are unrestrained by the orders or efforts of their commander will almost certainly result in violations which it is the purpose of the law of war to prevent. Its purpose to protect civilian populations and prisoners of war from brutality will largely be defeated if the commander of an invading army could with impunity neglect to take reasonable measures for their protection. Hence, the law of war presupposes that its violation is to be avoided through the control of the operations of war by commanders who are to some extent responsible for their subordinates."

Unlike the case against Yamashita, in invoking this international rule of command responsibility against

Kono, it is not necessary to resort to an assumption of knowledge on his part. The Government will show that he did know what was happening; that he was present and in personal control on Panay Island, where most of the specified offenses took place, for a large part of the time involved; that when he was absent a member of his staff was present, and if the staff member was not there one of his immediate subordinate commanders was present on the Island where most of the offenses occurred. There is no question in this case that his troops were in rout or that the enemy was upon them or that their communications had failed or that it was impossible for Kono to control his men -- none of these circumstances appear in this case.

Although we do not propose in this statement to go into detail as to the offenses committed, nevertheless, generally, the prosecution's case will include evidence which will prove that Kono commanded, among others, military units occupying Panay, Guimaras, and Tablas Islands; that beginning August 1943 and continuing through December 1944 these units engaged upon punitive expeditions, the apparent purpose of which was to eliminate as many as possible of the civilian population; that these punitive expeditions were carried out systematically through most of the populated areas of Panay Island and on into the mountains; that these expeditions were personally supervised or commanded by officers or noncommissioned officers directly under the command of Kono, and that in many instances the specified offenses

were committed by these same officers and noncommissioned officers; that the manner in which the expeditions were carried out followed a definite pattern.

We will not attempt to prove all of the thousands of murders which occurred at the hands of Kono's men, but we have chosen a small part, which part, however, clearly shows the widespread pattern in which these offenses occurred. We have not attempted to pick the most shocking or the least shocking. We have selected incidents which tell the story that is applicable to the whole picture in Panay during the accused's command.

We will show that no one was spared and that the victims were not armed soldiers whose chief complaint was lack of trial, but that they were men, women and children who had done nothing, who were just unfortunate enough to be living in the path of the ruthless Kono troops. We will show that in the majority of instances the proceedings were the same: Whether a large force of men or a patrol, they would go forth into the sitios, the barrios, or the municipalities, round up the innocent citizenry, and in many cases without even the formality of an interrogation, behead, bayonet, shoot, or simply beat to death.

We will show that no trials were given anyone on Panay Island during the period in question. The evidence will further reveal that the same forces went into neighboring islands and committed similar acts. And then we will show, finally, that in one instance on

Negros Island an American soldier was tortured and executed while this accused was present in person.

We believe the record should show the assistance which prosecution has given defense in preparing its case. Although the charges were not served upon the accused until 12 April 1946, nevertheless for a considerable period of time before that date, defense counsel was in the possession of a tentative draft and the final draft of the charge and specifications; that the defense counsel was furnished with a list of specifications containing the names of known Japanese who were present when each of the offenses occurred. Defense was given statements which had been taken by members of the prosecution staff from the accused. The Japanese who were mentioned as having been present when the various incidents specified occurred were brought together by the prosecution, and their presence was made known to defense counsel, who was given ample opportunity to interrogate each one. Prior to serving of charges defense counsel had secured statements from most of the Japanese and had the same translated.

When the Government has presented its evidence, which will form ample support for the charge and specifications, it will ask this Commission to find Takeshi Kono guilty and to sentence him to death by hanging.

May we call our first witness, sir.

COLONEL HAMBY: Yes.

CAPTAIN YARD: At this time, prosecution offers in evidence what has been marked for the purpose of identification as Prosecution's Exhibit No. 2, being a sketch map of Panay Island. Counsel for accused is already in possession of a copy of this sketch map and has no objection to its receipt into evidence.

COLONEL HAMBY: It is so ordered.

CAPTAIN YARD: If it please the Commission, in connection with this sketch map there is one correction which we would like to note. On Tablas Island, the town of Despojols, the correct spelling should be D-E-S-P-O-J-O-L-S.

At this time, also, we would like the record to show that the prisoner-of-war serial number of this accused is 51J-102147.

(Prosecution's Exhibit No. 2 was received in evidence.)

RYOICHI TOZUKA

a witness for the prosecution, was duly sworn and testified as follows through Interpreters Ogita and Kato:

DIRECT EXAMINATION

BY CAPTAIN YARD:

Q State your name.

A Ryoichi Tozuka.

Q Age?

A 50 years old, Japanese calendar.

Q Were you formerly a member of the Imperial Japanese Army?

A Yes.

Q What was your then rank?

A Lieutenant Colonel.

Q Do you know Takeshi Kono, formerly Lieutenant General in the Imperial Japanese Army?

A Yes.

Q Will you point him out if he is present in this court-room?

A (Pointing.)

... CAPTAIN YARD: Will the accused rise, please.

(Accused does so.)

Q Is this the man?

A Yes.

CAPTAIN YARD: May the record show that the witness pointed to the accused, Takeshi Kono.

Q When did you first arrive in the Philippine Islands?

A Towards the end of January, 1943.

Q Were you at any time in command of forces on Panay Island?

A Yes.

Q And when did you first arrive at Panay Island?

A It was toward the end of January, 1943, but I do not remember the date.

Q And what was the designation of the unit which you commanded on Panay Island?

A At first it was the 37th Independent Security Battalion, Infantry.

Q Is the answer, the 37th Independent Infantry Battalion?

A There is a "Security"; the word security is in there.

Q And did the 37th Independent Infantry Security Battalion later become the 170th Independent Infantry Battalion?

A Yes.

Q While you were in command of the 37th Independent Infantry Battalion, was Takeshi Kono your superior officer?

A In May of 1943 -- I do not exactly remember the date -- Takeshi Kono took office and from that time he was my superior officer.

Q In May of 1943 did Takeshi Kono command all of the troops on Panay Island?

A He commanded practically all of the troops on Panay Island, but there were some which did not come under his command.

Q What were those troops that did not come under his command?

A I don't remember all of them but there were units such as shipping unit, supply depot, army intendance, and army hospitals; they did not come under his command.

Q Then, would you say that the combat troops on Panay Island came under the command of Takeshi Kono?

A There was a divisional headquarters there so I cannot say all of them.

Q How long were you under the command of Kono?

A I was under the command of General Kono from the time he took office to the time of surrender.

Q And when was the date of surrender, if you recall?

A September 1, 1945.

Q Where were your headquarters located on Panay Island?

A Iloilo.

Q That is the city of Iloilo in Iloilo Province?

A Yes.

Q What was your mission while you were in command of troops on Panay Island?

A The mission was to confiscate wireless equipment in order to carry out the pacification on Panay Island.

Q Was your mission also to conduct punitive expeditions?

A Yes, we can go on punitive expeditions on orders from higher-ups, and also we can go on our own. The purpose was to confiscate wireless equipment.

Q And did your mission also include the capture of guerrilla suspects?

A We do not attack or capture men suspected of being guerrillas.

Q Did you ever capture any guerrillas?

A Yes, we have captured guerrillas.

Q Did you receive your orders to go on punitive expeditions from General Kono while he was in command?

A Yes.

Q Do you recall when that was?

A I remember the first time as being July of 1943, and the second time was in April of 1944.

Q And as a consequence of these orders, did you conduct punitive expeditions?

A Yes.

Q I hand you a photograph which has been marked for the purpose of identification as prosecution's exhibit number 3, and ask you to identify the person whose picture appears there (handed to witness).

A This is myself.

Q Is that a fair representation of you as you appear?

A I believe it is myself.

CAPTAIN YARD: May we have a ruling on this, sir?

LIEUTENANT MC CULLOUGH: Defense has no objection.

COLONEL HAMBY: It will be so admitted into the record, being identified as the picture of the witness.

(Prosecution's Exhibit No. 3 was received in evidence.)

Q I show you prosecution's exhibit number 2 and ask if you can point out thereon where your headquarters were located (handed to witness).

CAPTAIN YARD: May the record show that the witness marked on prosecution's exhibit number 2 the area of Iloilo City, Iloilo?

COLONEL HAMBY: Yes.

Q I hand you a photograph that has been marked for the purpose of identification as prosecution's exhibit number 4, and ask you if you can identify the person whose picture appears thereon (handed to witness).

A Yes, I know who it is.

Q What is his name?

A Hajime Fujii.

Q Were you the commanding officer of Hajime Fujii from May 1943 until surrender?

A Yes.

CAPTAIN YARD: We offer this photograph into evidence, sir, that is, exhibit number 4.

COLONEL HAMBY: It may be admitted into evidence.

(Prosecution's Exhibit No. 4 was then received into evidence.)

Q I hand you a photograph that has been marked for the purpose of identification as prosecution's exhibit number 5, and ask you if you can identify the person whose picture appears thereon (handed to witness).

A Yes, I know him.

Q Will you state his name?

A Noriyuki Otsuka.

Q Were you the commanding officer of Noriyuki Otsuka from May 1943 to September 1945?

A Yes.

CAPTAIN YARD: We offer exhibit number 5 into evidence, sir.

COLONEL HAMBY: It may be admitted into evidence.

(Prosecution's Exhibit No. 5 was received in evidence.)

Q I hand you a photograph that has been marked for the purpose of identification as prosecution's exhibit number 6, and ask you to identify it if you can (handed to witness).

A I know him.

Q Will you state his name, please?

A Hidemi Watanabe.

Q What was his rank?

A Lieutenant Colonel.

Q That is in the Imperial Japanese Army?

A Yes.

Q Was Watanabe a member of General Kono's staff?

A Yes.

Q Was that during the time that General Kono was in command of forces on Panay Island?

A I'm not exactly sure of the dates, but he was a staff member in the Kono Unit from around May 1943 until around July 1945 when the Kono Unit organization was changed into a division, at which time he became staff member of the division.

CAPTAIN YARD: Prosecution offers in evidence as exhibit number 6 the photo of Watanabe.

COLONEL HAMBY: It may be received in evidence.

(Prosecution's Exhibit No. 6 was received in evidence.)

Q Did you ever see Colonel Watanabe present on Panay Island?

A Yes.

Q Did you see him on Panay Island in September of 1943?

A I do not remember.

Q Do you know whether he was present in Panay Island in April of 1944?

A In Iloilo in September there was a unit commander meeting and I think I definitely saw him.

Q Then you would say he was present in Panay Island in September of 1943?

A Yes, general period.

CAPTAIN YARD: (To reporter) Will you read the last question, please.

(The last question was read by the reporter.)

CAPTAIN YARD: The question before that.

(The requested question was read by the reporter.)

THE WITNESS: I do not remember.

Q How frequently would Lieutenant Colonel Watanabe come to Panay Island?

A I do not remember exactly how many times.

Q Would you say, then, that he was there frequently or infrequently, that is, on Panay Island?

A Frequently.

Q Do you know whether or not he ever accompanied any of the punitive expeditions?

A I have no command relationship with him and I have not gone anywhere with him so I do not know.

Q He could, then, have accompanied punitive expeditions without your knowledge, is that so?

A I do not go around with him so I cannot say at all.

Q Were you present with all of the troops when they went on all of the punitive expeditions?

A I cannot say all of them but I went to most of them.

Q Would it have been possible for Colonel Watanabe to accompany the troops when you were not present when they went on the punitive expeditions?

CAPTAIN YARD: (To reporter) Now, will you read that question so the interpreter may get it.

(The last question was read by the reporter.)

A I do not know.

Q What were the duties of Colonel Watanabe when he was present on Panay Island?

A I am not the one who assigned missions. Missions were assigned by divisional commanders or General Kono, so I do not know.

Q I hand you a photograph that has been marked for the purpose of identification as prosecution's exhibit number 7, and ask you to identify it if you can (handed to witness).

A I know the person.

Q Will you state his name.

A Toshimi Kumai.

Q Were you the commanding officer of Toshimi Kumai from May 1943 to September 1945?

A Yes.

CAPTAIN YARD: Prosecution offers in evidence its exhibit number 7, photograph of Toshimi Kumai.

COLONEL HAMBY: Does the defense have any objections?

LIEUTENANT MC CULLOUGH: No, sir.

COLONEL HAMBY: It may be admitted into the record.

(Prosecution's Exhibit No. 7 was received in evidence.)

Q I hand you a photograph that has been marked for the purpose of identification as prosecution's exhibit number 8 (handed to witness), and ask you to identify it if you can.

A Chiyomi Toyota.

Q Were you the commanding officer of Chiyomi Toyota from May 1943 to September 1945?

A Yes.

Q I hand you a photograph that has been marked for the purpose of identification as prosecution's exhibit number 9, and ask you to identify it if you can (handed to witness).

A Yes, I can recognize it.

Q Will you state the name.

A Morio Matsuzaki.

Q Were you the commanding officer of Morio Matsuzaki? from May 1943 to September 1945?

A Yes.

CAPTAIN YARD: Prosecution offers in evidence its exhibits numbers 8 and 9, photographs of Toyota and Matsuzaki.

COLONEL HAMBY: There being no objection, they will be received in evidence.

(Prosecution's Exhibits 8 and 9 were received in evidence.)

Q Do you know Fusataro Shin, formerly Warrant Officer?

A Yes, I know him.

Q I hand you a photograph that has been marked for the purpose of identification as prosecution's exhibit number 10, and ask you to identify it if you can (handed to witness).

A Yes, I know who it is.

Q Who is it?

A Fusataro Shin.

Q What were the duties of Fusataro Shin on Panay Island while you were in command of troops there?

A He had no command relationship with myself. He was a member of the Kempei Tai.

Q Do you know whether or not he was ever detailed to accompany punitive expeditions on Panay Island?

A He has gone on punitive expeditions together.

Q Who commanded the expeditions, if you recall, that Shin accompanied?

A I do not remember how many times Shin went but when I went on the expedition I was in command.

CAPTAIN YARD: Prosecution offers its exhibit number 10, the photograph of Shin.

COLONEL HAMBY: There being no objection, it will admitted into evidence.

(Prosecution's Exhibit No. 10 was received in evidence.)

Q I hand you a photograph that has been marked for the purpose of identification as prosecution's exhibit number 11, and ask you to identify it if you can (handed to witness).

A Tadataka Kuwano.

Q Were you the commanding officer of Tadataka Kuwano from May 1943 to September 1945?

A Yes.

CAPTAIN YARD: Prosecution offers into evidence its exhibit number 11, the photograph of Kuwano.

COLONEL HAMBY: There being no objection, it will be admitted into evidence.

(Prosecution's Exhibit No. 11 was received in evidence.)

Q I hand you a photograph that has been marked for the purpose of identification as prosecution's exhibit number 12, and ask you to identify that (handed to witness).

A Jiro Motoki.

Q Was he under your command on Panay Island?

A From the time I took office until around July of 1945 he was under my command.

Q Would that be from January 1943 until July 1945?

A He was under my command from January 1943 until July 1944.

Q Then in June of 1944 he would be part of the Kono command, is that right?

CAPTAIN YARD: We will withdraw the last question.

A In June I believe he was still a part of my unit.

CAPTAIN YARD: Prosecution offers into evidence its exhibit number 12, photograph of Motoki.

COLONEL HAMBY: It may be admitted into evidence, if there are no objections.

(Prosecution's Exhibit No. 12 was received in evidence.)

Q I hand you a photograph that has been marked for the purpose of identification as prosecution's exhibit number 13 and ask you to identify it.

A Tokizo Makita.

Q Were you the commanding officer of Makita from May 1943 until September 1945?

A Yes.

CAPTAIN YARD: Prosecution offers into evidence its exhibit number 13, the photograph of Makita.

COLONEL HAMBY: There being no objections, it will be admitted into evidence.

(Prosecution's Exhibit No. 13 was received in evidence.)

Q I hand you a photograph that has been marked for the purpose of identification as prosecution's exhibit number 14, and ask you to identify that.

A Hisaki Itai.

Q Were you the commanding officer of Hisaki Itai from May 1943 until September 1945?

A Yes.

CAPTAIN YARD: Prosecution offers in evidence its exhibit number 14, the photograph of Itai.

COLONEL HAMBY: There being no objection, it will be admitted into evidence.

(Prosecution's Exhibit No. 14 was received in evidence.)

Q Did Hajime Fujii participate in punitive expeditions?

A Yes.

Q While General Kono was in command?

A Yes.

Q Did Noriyuki Otsuka participate in punitive expeditions during the Kono command?

A Yes.

Q Did Toshimi Kumai participate in punitive expeditions during the Kono command?

A Yes.

Q Did Chiyomi Toyota participate in punitive expeditions during the Kono command?

A Yes.

Q Did Morio Matsuzaki participate in punitive expeditions during the Kono command?

A Yes.

Q Did Tadataka Kuwano participate in punitive expeditions during the Kono command?

A Yes, he participated.

Q Did Jiro Motoki participate in punitive expeditions during the Kono command?

A I believe he has not participated.

Q Was Jiro Motoki in command of any troops at any time during the Kono command?

A He has never commanded a unit.

Q Did Tokizo Makita participate in punitive expeditions during the Kono command?

A I do not remember since it is about a noncommissioned officer, but I believe he has participated.

Q Did Hisaki Itai participate in punitive expeditions during the Kono command?

A As in the case of Makita, I do not know very well but I believe he has participated.

Q Did you send an expedition to Tablas Island in November 1943?

A Yes, I went personally.

CAPTAIN YARD: Sir, this witness's testimony will continue for some time yet. Would you care to have a recess at this time?

COLONEL HAMBY: The Commission will take a ten-minute recess.

(Short recess.)

CAPTAIN HAMBY: The Commission will be in session.

CAPTAIN YARD: Will the interpreter remind the witness that he is still under oath, please.

(Discussion ensues between Interpreter and Witness.)

CAPTAIN YARD: Will the reporter read the last question and answer, please.

(Question and answer read by the reporter.)

BY CAPTAIN YARD:

Q Did that expedition conduct operations in the vicinity of Despojols?

A On Tablas Island there is a place called Odiongan. We conducted a punitive expedition to the north of that place.

Q I show you prosecution's exhibit number 2 and ask you to point out on Tablas Island where the expedition operated (handed to witness).

A I cannot understand this map too well but it was generally north of this line; south of that point was conducted by another unit.

CAPTAIN YARD: May the record show that on exhibit number 2 the witness drew a line across Tablas Island, set diagonal lines above the horizontal line, and referred to the area where the diagonal lines were drawn as that part of the island where his forces conducted the expedition.

COLONEL HAMBY: It will be so noted.

CAPTAIN YARD: Sir, in connection with this witness's testimony, it is more or less general in nature. It would be rather difficult to point specifically to one specification, but it is more or less background for the testimony which will relate to the various specifications as other witnesses are called.

Q Were members of your unit stationed on Guimaras Island?

A Yes.

Q In the month of May 1944 do you know who commanded the unit on Guimaras Island?

A I remember that I was the one who was in direct command.

Q In immediate command on Guimaras was there a noncommissioned officer?

A There were about ten men stationed there with a non-commissioned officer as their leader. He was directly under the battalion commander. That is how I remember it.

Q And were your units on Guimaras in May of 1944 and December of 1944?

A I believe they were there continuously.

Q Do you know Masafuji Hamamoto?

A I do not know him until the time of surrender. I met him after we came here.

Q Do you know whether or not he was the noncommissioned officer in charge of your units on Guimaras Island?

A I do not remember who I placed there as the head because it is about noncommissioned officers.

Q Did you know Captain Kengo Watanabe?

A Yes, I know him.

Q Was he a member of your command on Panay Island?

A Yes.

Q Do you know where he is at the present time?

A I have heard that he was killed in action on Negros Island.

Q During what period on Panay Island was he under your command?

A I think it was from the end of January 1943 until around April of 1944, but I cannot remember clearly.

Q Did he at your direction direct punitive expeditions?

A Yes.

Q Did he conduct such an expedition into Camp Hopevale, Tapaz, Capiz, in December of 1943?

A I do not know the name "Hopevale." Where is it?

Q I show you prosecution's exhibit number 2 and point to Tapaz, located in Capiz Province, and ask you if Captain Watanabe conducted an expedition in December of 1943 in the vicinity of that community (handed to witness).

A In December of 1943 Captain Watanabe was in charge of an expedition following this route, generally coming back to Iloilo. I do not know whether he conducted a punitive expedition at Tapaz, but this is the route he took.

CAPTAIN YARD: May the record show that on exhibit number 2 the witness has drawn a line beginning south of Balete, north of Libacao, in Capiz Province, following a direction southeast below Tapaz and down to Iloilo.

COLONEL HAMBY: It will be so noted.

COLONEL GOFF: What month was that, please?

(Last answer read by the reporter.)

THE WITNESS: The route which he followed was drawn generally. It is not accurate.

Q Did you lead a punitive expedition to Batan, Capiz Province, in October of 1943?

A Yes.

Q Was Noriyuki Otsuka present on that expedition?

A Yes.

Q Was Tadataka Kuwano present on that expedition?

A Yes.

Q Was Morio Matsuzaki present on that expedition?

A Yes.

Q Did a portion of that expedition go to Altavas in October of 1943?

A They have passed Altavas also.

Q Did a portion of that expedition go to or near Balete in October of 1943?

A Yes, it went to Balete.

Q Do you know whether a part of that same expedition went to Tablas Island in November of 1943?

A In November of 1943 it went to Tablas Island.

Q Do you know whether or not Toshimi Kumai went to Tablas Island in November of 1943 with that expedition?

A He went.

Q Did part of the expedition to Batan go to Banga, Capiz Province, in October of 1943?

A I do not remember.

Q I show you prosecution's exhibit number 2, pointing out there at a point marked as Banga, and ask if members of the

expedition which went to Batan in October 1943 also went to Banga?

A A portion of it may have gone but I have no accurate memory of it.

Q Did members of that same expedition in October or November 1943 go to Libacao, Capiz Province?

A Yes, it passed Libacao.

Q Did members of your command conduct punitive expeditions in and around Sara, Iloilo Province, in 1943?

A Yes.

Q And was this after May of 1943?

A It is after May 1943.

Q Did members of your command conduct punitive expeditions in or around Ajuy, Iloilo Province in September of 1943?

A Yes.

Q Did members of your command conduct punitive expeditions at or near Dumarao, Capiz Province in September of 1943?

A May I see the map?

Q I hand you Prosecution's Exhibit No. 2. (handing to witness).

A We did not conduct an operation there at all.

Q Did members of your command conduct punitive expeditions at or near Passi, Iloilo Province in September of 1943?

A Yes.

Q Did members of your command conduct punitive expeditions at or near Barotac Viejo, Iloilo Province in September 1943.

A I do not remember of any operation there.

Q I hand you Prosecution's Exhibit No. 2, pointing to a municipality identified as Barotac Viejo, and ask you if members of your command conducted expeditions in the vicinity of that point (handed to witness).

A No, we did not go to Barotac Viejo. We may have passed the vicinity but we did not go to that place or the immediate vicinity at all.

Q Did members of your command conduct punitive expeditions at or near Tigbauan, Iloilo, in August 1943?

A I remember going through the Tigbauan vicinity.

Q Did members of your command conduct punitive expeditions at or in the vicinity of Leon, Iloilo province in April of 1944?

A I do not remember ever going there.

Q Did members of your command conduct punitive expeditions at or near Miagao, Iloilo Province, any time during 1944?

A I do not know.

Q Did members of your command conduct punitive expeditions at or near Arevalo, Iloilo, in 1944?

A I do not remember.

Q Did you occupy the high school at Iloilo City as a garrison headquarters?

A Yes, we were using it.

Q Was this during 1943 or 1944?

A I think it was until around June 1944, but I do not remember accurately.

Q Do you know whether or not Tadataka Kuwano was in the high school garrison during the period it was occupied as your headquarters?

A He was there.

Q What were his duties while he was there?

A He was a secretary in the battalion headquarters.

Q During the period from May 1943 to December 1944, did Takeshi Kono ever visit Panay Island?

A Yes, he has come.

Q Do you recall the first time that he arrived at the island?

A I think it was on the thirtieth of June 1943, or it may have been the first of July.

Q How long did he remain in Panay Island?

A At that time I went on an expedition as a unit of the Kono group and I do not know how long he stayed there: whether he stayed at Iloilo headquarters or whether he went back to the Cebu headquarters.

Q Was he still at Iloilo when you returned from the expedition?

A The expedition started out on July 8 and we returned in September. There was a meeting at Iloilo of unit commanders and I met him there, but I do not know whether he remained at Iloilo all that time or whether he went back to Cebu and came back for the occasion, or what his actions were. I went out on an expedition again so I do not know of his other actions. This was the latter part of September.

Q Did you return in the latter part of September?

A Yes.

Q How long did you remain at Iloilo?

A I do not remember exactly how many days but it was approximately around a week or ten days.

Q And during that week or ten days, was General Kono around Iloilo?

A I saw him at the meeting which took about one or two days, but I do not know whether or not he was at Iloilo all the time that I was there.

Q After September of 1943, when did you next see General Kono on Panay?

A I do not remember.

Q Was it in 1943?

A I believe he came again for the purpose of inspecting recruits but I do not remember the date.

Q Did you see him in 1944?

A Yes, I saw him.

Q When did you first see him in 1944?

A I think it was around May or June.

Q When did you next see him?

A I do not remember.

Q When General Kono would visit the island, how long would he generally stay?

A That is not definitely set.

Q During 1943 on Panay Island were the Japanese forces in control of the island?

A What do you mean, "control of the island"?

Q Were there any other forces occupying the island, other than Japanese forces, that is?

A Does that include guerrillas?

Q Yes.

A Just the Japanese Army Forces and the guerrilla units.

Q During 1943 what was the condition of communications between the various Japanese units on Panay Island?

A Generally, the wireless and communications facilities were insufficient so we cannot call it satisfactory.

Q Were you able to maintain contact with your forces?

A Generally, I was able to keep in contact with them but I cannot call it sufficient.

Q Were you in communication in 1943 with the Cebu headquarters of General Kono?

A Yes, we had liaison.

Q In 1944, outside of guerrilla forces, were there the forces of any other nations occupying Panay Island, other than the Japanese?

A No.

Q And what was the condition of communications in Panay Island during 1944?

A Compared to 1943 it was gradually getting worse.

Q Were you still in contact with your forces in 1944?

A The communication facility was extremely poor and there were many times when I could not keep in contact with them.

Q Would you say you were still able to command your unit during 1944?

A In 1944, due to the guerrillas and the poor communication facilities, liaison and communication was stopped at times with some of the units.

Q When did this first happen?

A I think it was toward the end of 1944.

Q Were you still able to maintain liaison with Sara and Ajuy during 1944?

A In 1944 we could not maintain liaison.

Q Did you have communication with Tigbauan in 1944?

A There were times when communications were cut and at these times we had liaison by the use of a banca over the sea.

Q Did you have liaison with the Cebu headquarters of General Kono during 1944?

A In 1944, the Kono headquarters were in Bacolod.

Q Did you have communication with Bacolod?

A We had communication but at times the wireless set would go out of order so at times we did not have communication.

Q When did the Americans first arrive at Panay Island?

A I do not know exactly but in my estimation it was on March 18, 1945.

Q And when did the surrender of the island take place?

A September 1.

Q Did you know Dr. Fermin G. Caram?

INTERPRETER OGITA: Medical doctor?

CAPTAIN YARD: Yes.

A Is he the former governor of Iloilo Province?

Q Yes, that is the man.

A If that is the man, I do know him.

Q Was he the puppet governor during the period from August, 1943, until September, 1944?

A I do not know anything about the military administration and I do not know who placed them there, but he was there as governor.

Q Did he have any conversations with you during the time you were on Panay Island?

A Yes.

Q Did he have any conversations with you relative to the death of civilians at the hands of your troops?

A There was no conversation concerning death by troops.

Q Do you know whether or not your troops killed any civilians during 1943 or 1944?

A I do not know.

Q Do you know whether Dr. Caram ever talked with General Kono.

A I do not know.

Q Do you know whether Dr. Caram ever talked with Lieutenant Colonel Hidemi Watanabe?

A Yes, we had a conversation together.

Q With Colonel Watanabe, is that it?

A Yes.

Q What was the nature of the conversation?

A I do not remember each -- what we spoke of clearly, but it was mostly about idle gossip.

Q Do you know whether or not Dr. Caram mentioned the death of civilians to Colonel Watanabe?

A I do not know.

Q Do you know Ezequiel L. Villalobos?

A I do not know him.

Q Do you know the man who edited the newspaper at Iloilo City?

A Is that Japanese-language paper, or the English paper?

Q The English paper.

A Is he a Japanese?

Q No.

A There was a Japanese editing a paper called "The Panay Times", but I did not know any others.

COLONEL HAMBY: The Commission will take a recess. (Short recess.)

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: Sir, at this time we have concluded the direct examination of this witness. We offer him for cross-examination.

LIEUTENANT MC CULLOUGH: On behalf of the defendant, if the Commission please, the defense desires to postpone the cross-examination of this witness until tomorrow morning. We feel that we can expedite the hearing and save time in the long run by doing that.

COLONEL HAMBY: That will be agreeable with the Commission.

CAPTAIN YARD: We have no objection, sir.

COLONEL HAMBY: Then at this time the Commission will recess until 1300 hours today.

(The Commission thereupon recessed until 1300 hours.)

AFTERNOON SESSION

The Commission met, pursuant to recess, at 1300 hours, 15 April 1946.

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: Sir, may the record show that the following members of the Commission are present: Colonel Hamby, Colonel Goff, Lieutenant Colonel Chase, and Captain Ellingson. The accused together with his defense counsel and personal interpreter and members of the prosecution are present.

Prosecution calls Estrella Azuelo.

ESTRELLA AZUELO

a witness for the prosecution, was duly sworn and testified as follows through Interpreters Praxedio Villaluz and Pedro Genoves:

DIRECT EXAMINATION

BY LIEUTENANT SHEPHERD:

Q What is your name?

A Estrella Azuelo.

Q And your age?

A 33 years.

Q Are you a Filipino?

A Yes.

Q Where do you live?

A Ajuy, Iloilo.

Q During the Japanese occupation of Panay Island were you at any time captured by the Japanese forces?

A Yes.

Q Would you tell me the approximate date that this happened and what did happen?

A On September 4, 1943, we were caught by the Japanese in our evacuation place. That was the day of the Japanese occupation.

LIEUTENANT SHEPHERD: If the Commission please, this witness' testimony will refer to specification 1.

Q Would you tell the Commission where you were captured, the locality?

A In barrio Ticongcahoy, town of Sara.

Q Would you relate the fact of your capture and what happened following your capture.

A September 12, 1943, while we were hiding in the forest, that was also the day when the Japanese had an expedition to that place, Fujii captured our hiding place, among other Japanese. There were many other Japanese with Fujii but I don't know the names.

Q I hand you prosecution's exhibit number 4 and ask you whose picture this is.

A This is Fujii.

Q And is this the picture of the Japanese that you referred to as capturing you and other civilians at barrio Ticongcahoy?

A Yes.

Q Approximately how many civilians were captured by the Japanese along with you?

A We were over 100, including women and children; there were 13 males.

Q After you were captured by the Japanese at your evacuation place, where were you taken by these Japanese?

A At the headquarters of Captain Fajardo.

Q Just who was Captain Fajardo?

A He is the head of the soldiers.

Q And after you were taken to the house of Captain Fajardo, what next happened to you and to the other civilians?

A Fujii, upon reaching the place, tied hands of the males on their backs, the male civilians.

Q And then what happened?

A When the males were tied in the backs, the women were formed into a circle and in the middle the males were put. The twelve men who were tied were all beheaded and one, that is, the thirteenth, my brother,was also stabbed and killed.

He was stabbed at the back by a weapon like a hunting knife.

Q Did you see these killings take place yourself?

A Yes, I saw it with my own eyes because they were in the middle of the house.

Q How far from the scene of the killings were you yourself?

A About two arms' length.

LIEUTENANT SHEPHERD: If the Commission please, I think it's evident that many of our witnesses understand English fairly well but we find it best, naturally, to use an interpreter, and as a consequence they may answer before the interpreter has a chance to interpret to them in some instances.

Q Do you know the names of any of the victims of this killing?

A I don't know their names because we are all evacuees.

Q How many people in all -- to go over the ground again -- did you see executed or killed?

A Twelve men; the thirteenth is my brother, and the fourteenth is the wife of Captain Fajardo.

Q Then you saw twelve men executed, you saw your brother executed, and the wife of Captain Fajardo; is that correct?

A Yes.

Q What was your brother's name?

A Buenvenido Azuelo.

Q After the killings took place, what happened next.

A After the killings we were asked by the Japanese to go downstairs and pick dried woods to be brought upstairs.

Q And then?

A After reaching upstairs with the dried woods, Fujii got

the woods and piled them on top of the corpse. Then we were asked to go down and Fujii lighted the wood. And the wood, including with the corpse and the house, were all burned.

Q In the killing of the fourteen people that you have mentioned, did you yourself see the actual killing?

A Yes.

Q Do you know what Japanese men were responsible for the actual killing itself?

A I don't know.

Q Let me phrase that a little differently. Who did the killing of these people?

A Fujii was the one who killed those people. Only Fujii was the one who killed those people.

Q Then you yourself actually saw Fujii kill these fourteen people only a meter or so away from you, is that correct?

A Yes.

Q Were these people given a trial before they were killed?

A No.

Q Do you know why the Japanese killed these people?

A I'm sorry, I don't know.

Q To the best of your knowledge, were any of these people guerrillas?

A None.

LIEUTENANT SHEPHERD: Your witness.

CROSS EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q How did you learn Fujii's name?

A Because when we surrendered everybody was calling that particular person Fujii.

Q How long had you known him before you saw him kill these people?

A Three days.

Q Did you know the names of any other Japanese around Sara?

A No.

Q Did you know a Captain Kengo Watanabe?

A I don't know him.

Q Have you ever heard that name?

A I don't know; I have not heard.

Q How long were you kept captive at headquarters before these people were executed?

A We were imprisoned there half a day.

Q Had there been any Japanese killed that day by any of the guerrillas?

A None.

Q Do you know of a battle between the guerrillas and the Japanese about that time in your town?

A I don't know because we always hid in the forest.

Q While you were kept in prison for that half a day, were you all kept together?

A Yes, we were together, all of us.

Q Were the weapons taken away from the men who were put in prison that day?

A None, it was Fujii's weapon.

Q Were the Filipinos' weapons taken away from them, the twelve men?

A Those men did not have any weapons.

Q Do you know where those men operated a wireless?

A I don't know.

Q Do you know of a wireless being operated around Sara at that time?

A I don't know.

Q Do you know the name of the guerrilla leader who was imprisoned with that group?

A No.

Q Was your brother who was killed a guerrilla?

A No.

Q Did your brother hold any rank in either the guerrillas or in the Filipino Army?

A He has none.

Q How old was he?

A Eighteen years.

Q Was Captain Fajardo present when his wife was killed?

A Captain Fajardo was not there.

Q Do you know where he was?

A I don't know; I don't know where he went.

Q Now, about this killing, did Fujii kill all of the fourteen persons that you have testified about?

A Yes, I am sure it's Fujii.

Q Did the same man kill all of those people?

A Yes, because only Fujii killed all of them.

Q How long did it take?

A It did not take any time because it was easy to cut their heads.

Q Was this in one room; were they all killed in one room?

A Yes, we are all in one room.

Q Was there any other persons in that room beside yourself who was not killed?

A There were other girls in the room who were not killed; only the males were killed.

Q Why was the wife of Captain Fajardo killed then?

A Because she was the latest; the last one.

Q Do you know why she was killed and the other women who were in the room were not killed?

A I don't know.

Q How large was the room?

A About the size of this room.

LIEUTENANT MC CULLOUGH: Let the record show this room is approximately 20 feet wide and 60 feet long; is that about right?

LIEUTENANT SHEPHERD: Yes.

LIEUTENANT MC CULLOUGH: Satisfactory?

COLONEL HAMBY: Satisfactory.

Q Was this room in a house or in a building?

A It was a sort of barracks style, it just rested on the ground. It has no flooring.

Q How did you know that these people were not given a trial?

A How I can I tell when we are not asked?

Q Did this house have more than one story to it, that is, more than one floor?

A It is only one floor because it rests on the ground.

Q How,then,could you carry wood upstairs in this building as you testified about?

A What I would like to say is that we brought it inside the house.

Q When was the first time you saw the picture which you were handed a while ago?

A I saw that picture when we went to where the Japanese are interned.

Q Where was that?

A In the Japanese prisoner camp.

Q What town was that in?

A Here in Manila.

Q Was that out in the airfield here in Manila?

A Yes.

Q Do you know the names of any other Japanese that were stationed near your barrio at any time during the occupation besides Fujii?

A I don't know any.

LIEUTENANT MC CULLOUGH: That's all.

LIEUTENANT SHEPHERD: Does the Commission have any questions to ask the witness?

COLONEL HAMBY: By the Commission?

There appear to be none. Witness excused.

(Witness excused.)

CAPTAIN YARD: Severo Posadas

SEVERO POSADAS

a witness for the prosecution, was duly sworn and testified as follows through interpreters Praxedio Villaluz and Pedro Genoves:

DIRECT EXAMINATION

LIEUTENANT SHEPHERD: If the Commission please, this witness' testimony will relate to specifications 2, 3, 4, and 5.

BY LIEUTENANT SHEPHERD:

Q What is your name?

A Severo Posadas.

Q What is your age?

A Thirty-five.

Q Are you a Filipino?

A No.

Q What is your nationality?

A Filipino.

Q Where do you live?

A Barrio Progreso, municipality of Ajuy, Province of Iloilo.

Q During the Japanese occupation of Panay Island, were you at any time captured by the Japanese?

A Yes, I was caught by the Japanese.

Q Would you tell me the approximate date that this occurred and what happened after you were captured?

A On the ninth of September, 1943, we were caught by the Japanese at sitio Naboongan.

Q Who do you mean by "we"?

A My companions were some civilians, my wife, and my children, and my parents.

Q After you were caught by the Japanese what occurred next?

A When they caught us our hands were tied behind our backs and they started to kill us.

Q How many people do you know were captured with you, including your family?

A They were all about 44.

Q How do you happen to know how many people were captured by the Japanese at the same time that you were captured?

A I know because I was the barrio lieutenant at that barrio. Besides, I was also there together with them when they were caught. My eyes was focused on them.

Q What happened to you and the other people captured by the Japanese next?

A After we were caught, Basilio Posadas and myself were tied, our hands were tied behind our back, and tied to banana plants while the rest were brought to the house of Demonteverde.

Q What was the name of the place where the Japanese captured you?

A At Sitio Naboongan, barrio Progreso.

Q What is the relationship of Basilio Posadas to you?

A Basilio Posadas is my son.

Q After you and your son were tied to banana trees, what happened after that?

A After we were tied, after I and my son were tied, the rest of my companions, my other forty-two companions, they were all stabbed near the house of Demonteverde.

Q What happened then?

A After the stabbing the house was burned, was set afire.

Q How far from the house of Demonteverde were you and your son tied at the time these killings took place?

A Not over ten meters.

Q Did these killings take place inside the house of Demonteverde or outside the house of Demonteverde?

A Every time they are removing the people from the house and upon reaching the ground they are killed, on the side of the house, on the ground.

Q Then the killings took place outside the house of Demontoverde, is that correct?

A Yes, at the eaves of the house.

Q Were you able to see the killing take place yourself from where you were tied?

A It was very clear to us because the place where we were was elevated.

Q What method was used by the Japanese to kill these forty-two people?

A They used their long sabers to cut the heads.

CAPTAIN YARD: In the witness' testimony just a short time ago he used an expression that was interpreted to mean "stabbing." We ask the interpreter whether or not he could have been mistaken in the use of the word "stabbing," and whether or not it could not have been "hacking," rather than "stabbing."

INTERPRETER VILLALUZ: It may be "hacking."

BY LIEUTENANT SHEPHERD:

Q Did you yourself see the Japanese that did killing of the people?

A Yes, I am the one; me together with my son.

Q Do you know the names of any of the Japanese that did killing?

A Only those that did the hacking are the ones I recognized.

Q How many Japanese did kill these people? Was it one or two or more?

A Some of the Japanese did not help in the killing, but only helped in bringing down the people who were about to be killed.

Q How many Japanese actually did killing?

A Only one Japanese.

Q Do you know the name of that Japanese?

A Yes, I know the name.

Q What is it?

A It was Fujii.

Q I hand you prosecution's exhibit 4 and ask you if this is a picture of that man.

A Yes, he is Fujii.

Q And this is the man that you actually saw kill forty-two people ten meters from you, is that correct?

A Yes, he is the one.

Q How did you learn the name of Fujii?

A I know it because when we were caught and while we were being brought to where the banana plants were, some people, the cargadors, told us that he is Fujii, and that I cannot forget because I know and I am sure that the man who killed those forty-two persons, including my children -- I quite remember it clearly because included among the forty-two were my son; my father, Clemente Posadas; Domini Bonifacio, Felicitas Posadas were with them.

Q How many sons did you have?

A One, Basilio Posadas.

Q Was your son among the forty-two people killed at barrio Progreso?

A My son was not included among those forty-two who were killed because we were tied to the banana plants.

Q Then your son was not killed by the Japanese at barrio Progreso?

A No.

Q Will you name the members of your family and their relationship to you that were killed by Fujii at barrio Progreso.

A Esteban Baldonido, my uncle; Atanacia Gotongan, my mother-in-law; Virginia Punsalan, aunt of my wife; Donata Punsalan, relative to my wife; Porfirio Bonifacio, son of Virginia Punsalan; Donato Causing, second cousin of my father.

Q What were the names of the members of your immediate family that were killed?

A Clemente Posadas, Domini Bonifacio, Felicitas Posadas. Clemente Posadas, my father; Domini Bonifacio, my wife; Felicitas Posadas, my daughter.

Q After the killing of these forty-two people had occurred, what next happened.

A After the killing of the forty-two persons by Fujii, we were tied first on the waist. Meanwhile, as originally, our hands were tied behind our backs, and some bundles of things were tied on our necks as if we were beasts of burden. We were carrying some things on our neck, tied on our neck. Meanwhile they were holding the end of the rope as if we were carabaos.

Q Did you ever see the bodies of the members of your family that were killed by the Japanese near the house of Demonteverde?

A Yes, I saw.

Q Did you have an opportunity to bury these bodies?

A On that day I was not able to bury them because we were carried away by the Japanese. However, when I returned I really buried the corpse.

Q Where were you taken by the Japanese following the killing of the members of your family and others?

A We were brought to barrio Progreso where we passed an old man in a certain house. The old man was so weak that he was not able to run away. They caught the old man, tied him, killed him, and then burned him in the house.

Q After the killing of this old man in barrio Progreso, where did the Japanese take you next?

A After that we proceeded to barrio Gaun.

Q And what occurred there?

A We proceeded to barrio Gaun where, again, we were tied to a tree near the house of the barrio lieutenant. There they caught a certain man by the name of Paulino Borra.

Q Was Fujii still in charge of the Japanese that were taking you along on this trip, on this punitive expedition?

A Fujii was the leader of those Japanese as we went along.

COLONEL HAMBY: Prosecution may continue examination of this witness after the Commission takes a ten-minute recess.

(Short recess.)

COLONEL HAMBY: The Commission will be in session.

LIEUTENANT SHEPHERD: (To interpreter) Will you remind the witness that he is still under oath.

(Discussion ensued between the intepreter and the witness.)

BY LIEUTENANT SHEPHERD:

Q After you arrived at barrio Gaun, what occurred there?

A When we arrived at barrio Gaun, they caught Borra.

Q After Paulino Borra was captured by the Japanese, what then occurred?

A They whipped him and cast him to the ground.

Q What next?

A After that they tied him at the hands and brought him

and tied him again with us in the tree near the house of the barrio lieutenant.

Q Continue.

A After that, in the following morning, we proceeded to Sara.

Q Did anything occur during the journey from Gaun to Sara?

A While we were approaching Sara, Paulino Borra became very tired and fatigued. He refused to walk more, and lay on the ground. The Japanese went back, bayoneted him, and after that cut off his head.

Q Do you know the name of the Japanese who bayoneted Paulino Borra?

A I did not know him, only that he was with that group.

Q Following the killing of Paulino Borra, did the expedition continue on?

A We continued, proceeding to Samponongbolo.

Q What happened when you reached barrio Samponongbolo?

A When we arrived in Samponongbolo we were tied to the wall attached to the granary of the Chinese. Then we were removed one by one from the wall where we were tied and Otsuka was the one who pushed us up.

Q Would you tell me what happened after you were taken from the rice granary?.

A As we were twelve tied to that wall, eleven were killed and I was the one left.

Q These eleven people that you mentioned were killed, were they captured at Samponongbolo?

A Other than the ten caught in Samponongbolo, those were killed in the granary.

Q Then there were ten people captured in Samponongbolo, is that correct?

A There were twelve of us from Gaun on our way to Samponongbolo. Ten were caught on the way, and also killed on the way.

Q Do you know the name of the Japanese who killed these ten men at Samponongbolo?

A Yes, he was Otsuka.

Q I hand you prosecution's exhibit 5 and ask you whose picture is this (handed to witness).

A Otsuka.

Q And is this a picture of the Japanese who killed ten people at Samponongbolo?

A Yes, he is.

Q Are you sure of that?

A He is the one who killed my son.

Q Was your son one of the ten killed at Samponongbolo?

A Yes, killed by that.

Q Was he one of the ten that you have already mentioned as being killed at Samponongbolo, or was he killed in addition to those ten?

A He was one of those who was killed.

Q One of the ten?

A One of the ten who was killed.

Q And what was your son's name?

A Basilio Posadas.

Q How far were you away from the place where Otsuka beheaded ten men including your son, Basilio.

A The distance which I was tied was only three meters.

Q Was anyone else killed by the Japanese in Samponongbolo to your own knowledge?

A What I only say is that the one I saw with my own eyes when they were killed at Samponongbolo -- I was near to the place when I was tied in there.

Q Did you see a Chinese by the name of Iniong killed at Samponongbolo?

A Chinese by the name Iniong is the richest man in that place, Samponongbolo.

Q Did you see this Chinese named Iniong killed in Samponongbolo?

A Yes, he was killed by whipping, by beating.

Q Do you know the name of the Japanese who killed Iniong?

A I was not able to know because they whip him one after another.

Q Was Fujii among the Japanese doing the killing of the ten Filipinos including your son, at the time Iniong was killed?

A He was in the same group.

Q Was he present at the time they were killed?

A Yes, there were many of them there.

Q Did the Japanese take you with them to barrio Ticongcahoy?

A Yes, they took me with them when we left Samponongbolo.

Q What occurred when you reached Ticongcahoy?

A When we arrived at Ticongcahoy they tied me to the tree and then they waited for some Japanese -- for other Japanese who were delayed on the way.

LIEUTENANT SHEPHERD: Will the reporter read the last answer back?

(The last answer was read by the reporter.)

Q After you were tied to the tree at Ticongcahoy, what happened next?

A When they all met, some of them who were delayed brought with them some women, children, and men; I don't know how many of them.

Q What happened to these people that were brought with the Japanese?

A What happened is that they killed those people and piled them under the banana trees.

LIEUTENANT SHEPHERD: Read the last answer, please.

(The last answer was read by the reporter.)

Q What method was used to kill these people?

A They killed them by hacking, and the children were only cast to the ground.

Q How far were you from the scene, the place where this killing took place?

A Pretty near. It would be at least ten meters but not more than that.

Q How many people would you estimate were killed by the Japanese at that place?

A According to my estimate, those people would not be less than fifty persons.

Q Do you know the names of the Japanese that actually killed this approximate number of fifty people?

A Yes, they were Fujii and Otsuka.

Q Did they do all the killing themselves or did some of the soldiers do killing also?

A So many of them there, but I saw with my own eyes that they were told who did the killing.

Q Did Otsuka do all of the killing?

A They were the ones who did the hacking, and the rest of the Japanese were the ones casting the children to the ground.

Q Will you describe how these Japanese killed the children?

A They threw them to the ground; those big ones were hacked.

Q By "hacking," do you mean to chop or to behead?

A To cut the head, because they were tied at the back. The children were not tied but they were only thrown to the ground.

Q And you actually saw this killing take place yourself?

A I saw because they brought me with them.

Q On the road from Samponongbolo to Ticongcahoy, did you see any of the cargadors killed by the Japanese?

A Yes, I saw.

Q Would you explain what a cargador is?

A The one carrying something on their shoulder, bringing things, food and other things.

Q Did they carry for the Japanese?

A They were the things for the Japanese.

Q In other words, the cargador was a Filipino pressed into service by the Japanese to carry for them, is that correct?

A Yes, those persons who were carrying things on their shoulders for the Japanese.

Q How many cargadors did you see killed by the Japanese between Samponongbolo and Ticongcahoy?

LIEUTENANT SHEPHERD: Will the reporter read the question to the interpreter.

(The last question was read by the reporter.)

A There were no cargadors, only those caught on the way were killed other than the cargadors.

Q How many were caught on the way and killed?

A Ten persons.

Q Did you actually see these people killed?

A Yes, I saw.

Q Do you know the names of the Japanese that killed them?

A It was Otsuka.

Q Was Fujii present with the Japanese when Otsuka killed these ten men?

A He was there also.

Q To the best of your knowledge, were any of the people that we have previously mentioned as being killed at barrio Progreso, at Ticongcahoy, at Samponongbolo -- were any of these people given a trial before they were killed?

A No.

Q Do you know any reason why the Japanese killed these people?

A I do not know.

Q Were they guerrillas to the best of your knowledge?

A They were not guerrillas.

LIEUTENANT SHEPHERD: Your witness.

CROSS EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Is it correct that the first killing that you have testified about took place in Progreso?

A At sitio Naboongan, barrio Progreso.

Q How far is that from Iloilo?

A It is 90 kilometers from Ajuy to Iloilo, approximately.

Q Do you know the names of any of the other people who were killed there that you have testified about?

A Yes.

Q What were their names?

A Outside of my family?

Q Yes, outside of your family, what were the names of people you know?

A Mateo Biboso, Amalia Biboso, Donato Causing, Jovito Diaz, Virginia Punsalan, Donato Punsalan, Porfirio Bonifacio, Beata Punsalan, Concepcion Bonifacio; the rest I have not remembered.

Q What month and year was that?

A About September 19, 1943;

Q Were there any combat operations being conducted in that vicinity at that time?

A There were no more combat operations.

Q Didyou hold any public office yourself during the Japanese occupation?

A No.

Q Do you know what guerrilla outfits were operating in that vicinity at that time, or the names of them?

A I know in some other places but in our place, no.

Q Did you work with the guerrillas?

A No.

Q Did the same person behead or stab all of the 42 persons that were killed at Progreso?

A Yes, they were beheaded.

Q Was that all done by one man?

A Yes.

Q How long did it take?

A It was quite a long time, because he did it one by one.

Q Did it take a day?

A It was not almost a day.

Q Was it half a day?

A Not even half a day.

Q Did he do it in an hour?

A More than that.

Q Was it two hours?

A I don't know because I did not see anything to base upon my estimate.

Q Were any of them shot?

A No, they did not shot because all of them were tied.

Q Were their heads all cut off with the sword.

A Yes.

Q Were any of them bayoneted?

A No, they were hacked only.

Q What do you mean by the word "hacked"?

A In our place the act of doing that is called "hacked".

Q Do you mean that their heads were cut off?

A Yes.

Q Were there many others besides yourself who were tied to the trees there that they did not kill?

A None; all of those with the exception of myself were killed.

Q How does it happen that you were not killed?

A Because they made me to carry all their things.

Q Were you paid by the Japanese Army?

A No.

Q Were you a pack carrier?

A I was a prisoner and they tied the things on my neck.

Q Were you put into this house of Domonteverde?

A No, we were tied to the banana tree.

Q Where was that?

A That was in sitio Naboongan.

Q What is this"Domonteverde" that you are speaking about?

A He was Cesario Domonteverde who was farming in that place.

Q Was it near that house that you were taken and tied to these trees?

A Very near, because these banana trees were planted by him.

Q What was done with the 42 bodies?

A They were left there.

Q Were any of them burned?

A Some of them in the house was burned; were reached with the fire and burned.

Q Were any of those bodies placed in the house before it was burned?

A They were at the eave of the house because they were killed at that place.

Q How far is it from Progreso to Gaun?

A About two kilometers and a half.

Q After the killing that you just talked about, did you go to the barrio of Gaun the next day?

A Yes.

Q How long did you stay in Gaun?

A We stayed that day and the next day we proceeded to Sara.

Q How long then did you stay in Sara?

A We passed through Sara only but we didn't stop.

Q How long did you stay in Samponongbolo?

A More or less I estimate, about three hours.

Q How far is it from Gaun to Sara?

A About 10 kilometers.

Q How far is it from Sara, then, to Samponongbolo?

A Very near, about two kilometers.

Q How long did you say you were in Samponongbolo?

A According to my estimate, about three hours.

Q Did you go on then to Ticongcahoy the same day?

A Yes.

Q How long were you there?

A For about a day.

Q Where did you go then?

A While we were there they told me to catch carabao and then I fled.

Q Were you ever captured by the Japanese, then, at any other time?

A Never, no more.

Q Were all the people that you have seen killed, killed in one of those four barrios that you have named?

A Yes.

Q Where was your home?

A In barrio Progreso.

Q How long did you live there?

A About 25 years.

Q How many people were in that barrio?

A Not less than 300 people.

Q Was Fujii ever stationed there?

A No; they only pass by.

Q When did you first learn his name?

A After the penetration they established a garrison at Culasi at this period and he stayed there long.

Q What other town is Culasi near?

A Culasi is a barrio in the town of Ajuy.

Q During the Japanese occupation did you ever live in Ajuy or work there?

A No; during this time sometimes I go downtown but when I see Japanese I ran away.

Q How did you know that Fujii was stationed at Ajuy?

A Because sometimes from Ajuy we went to Culasi.

Q How do you know that there weren't any trials held for any of these people whamyou saw killed?

A In this case I have not known of any because they were only killed without investigation.

Q Do you know what they did with their firearms?

A No.

Q Do you know whether any of them had bolos?

A If they saw a bolo in the houses, they brought it with them.

Q How many of these Japanese --

CAPTAIN YARD: Just a moment, please. Did the reporter get the last answer? Will he please read it?

(Answer read.)

COLONEL GOFF: Who are "they"?

CAPTAIN YARD: I do not know, sir.

COLONEL GOFF: Who does he mean by "they"?

THE WITNESS: (Through interpreter) The boys they brought with them.

COLONEL GOFF: Filipino boys?

THE WITNESS: Yes, those who were used for cutting wood, firewood.

CAPTAIN YARD: Just a moment, please. Will you read the last answer of the witness?

(Answer read.)

BY LIEUTENANT MC CULLOUGH:

Q Did you ever hear the name of Captain Kengo Watanabe?

A No, I did not stay in that barrio and I did not have any way of knowing them.

Q How, then, did you know Otsuka's name?

A Because he was the one who was brought us, captured us, and the one who killed my son.

Q Did you ever hear of a Japanese by the name of Lieutenant Matsuzaki.

A I did not hear.

Q Outside of Fujii and Otsuka, do you know the names of any of the Japanese who were ever stationed down in that area any time during the occupation?

CAPTAIN YARD: May it please the Commission, I would like to have this question read again, and I would like the interpreter to caution the witness to answer the question as it is asked and not let the witness get ahead of the interpreter when he is answering the question to such an extent that the interpreter can't give us the full answer. There is a great deal of talking going on back and forth between the witness and the interpreter, a tremendous amount of talking that may wind up with an answer of simply yes or no. We ask the Commission to caution the interpeters to cease this type of talking with the witness and this type of answering.

LIEUTENANT MC CULLOUGH: That the defense will join in.

COLONEL HAMBY: I instruct the witness to answer the question in as few words and as simply as he can.

(To reporter) Will you read the last question.

(Question read.)

A No more.

Q Do you know this man here, standing up?

(The accused, Kono, stands up.)

A I have not seen that man.

Q Have you ever seen him on the island of Panay any time during the occupation?

A No, I have not been able to go around.

LIEUTENANT MC CULLOUGH: Have the record show General Kono was standing.

Q Now, out of all the Japanese that you have seen, the only two that you know by name are the two that did the killing in these cases, is that correct?

A Yes.

LIEUTENANT MC CULLOUGH: That's all.

COLONEL HAMBY: The Commission will take a ten-minute recess.

(Short recess.)

COLONEL HAMBY: The Commission is ready to proceed.

CAPTAIN YARD: Sir, Captain Lagdameo, Chief Interpreter, has requested that he be sworn in order to supervise the work of the interpreters here. May we swear him?

COLONEL HAMBY: It is so ordered.

(Jesus A. Legdameo, Jr., was sworn as an Official Court Interpreter.)

LIEUTENANT SHEPHERD: (To interpreter) Will you remind the witness that he is still under oath?

(Discussion ensued between interpreter and witness.)

LIEUTENANT SHEPHERD: Has the Commission any questions to ask the witness?

EXAMINATION BY THE COMMISSION

BY COLONEL HAMBY:

Q At barrio Ticongcahoy how many members of the Japanese Imperial Forces were present when these sixty noncombatant Filipinos were killed?

A They were many; I did not count.

Q I ask the witness to give us an approximation of how many.

A In my estimate, not only 400 -- a little over 400.

COLONEL HAMBY: Any other questions by the Commission?

BY CAPTAIN ELLINGSON:

Q You state that twelve persons were tied on or near the Chinese granary, is that correct?

A Yes, that's true, twelve including myself.

Q Were all of these persons executed except yourself?

A Yes.

Q Was the Chinese, Iniong, one of those eleven persons?

A That was a different group. After the killing of the eleven, Iniong was beaten to death.

COLONEL HAMBY: No further questions by the Commission.

Witness is excused.

(Witness excused.)

FEDERICO ARAC

a witness for the prosecution, was duly sworn and testified as follows through Interpreters Villaluz, Genoves and Lagdameo:

DIRECT EXAMINATION

BY LIEUTENANT SHEPHERD:

Q What is your name?

A Federico Arac.

LIEUTENANT SHEPHERD: If the Commission please, this is in regard to Specification No. 6.

Q What is your age?

A 33.

Q Are you a Filipino?

A I am a Filipino.

Q Where do you live?

A Barrio Agbobolo, town of Ajuy, Iloilo.

Q During the Japanese occupation of Panay Island, were you captured by the Japanese?

A I was caught in our barrio.

Q What was the approximate date that this occurred?

A September 15, 1943, about.

Q How many other civilians of barrio Agbobolo were captured with you?

A Approximately sixty of us.

Q And approximately how many Japanese soldiers captured the people in barrio Agbobolo

A Approximately forty-six of them, including the Filipinos who were with them.

Q What was done with the people that were captured in the barrio after they were captured?

A After we were captured we were gathered in one place in the barrio, and near us was a Chinaman sitting. He was caught and tied behind his back. Another man passing by was also caught and tied behind his back and placed together with the Chinaman.

Q While you were in this place where the Japanese had placedyou after you had been captured, did you see anyone killed by the Japanese?

A They killed the Chinaman and that man who passed by carrying rice.

Q What was the name of the Chinaman, if you know?

A I know him to be Akaw, that's what they call him.

Q Do you know the name of the Filipino that was killed by the Japanese?

A No.

Q Why were these two men killed?

A I don't know the reason why.

Q Were they tried before they were killed?

A They were asked only one or two questions and then hacked to death.

Q You mean beheaded? Were they beheaded?

A Yes, beheaded.

Q Were you able to hear the questions asked these two men before they were killed?

A I did not hear.

Q How many meters were you from the place where these men were killed?

A About five meters.

Q Do you know the name of the Japanese who killed these two men?

A I know one; the other one I did not know.

Q What is the name of the one you know?

A Fujii.

Q I hand you prosecution's exhibit number 4 and ask you whose picture it is (handed to witness).

A This is Fujii.

Q Did you recognize any of the other Japanese that were in the group when these men were killed?

A I don't know the rest.

Q Did this man kill both Akaw and the Filipino, or whom did he kill?

A Yes, the both of them.

Q He killed both?

A He killed both of them.

LIEUTENANT SHEPHERD: May the record show that this man mentioned in the testimony was prosecution's exhibit 4, Fujii.

Q How did you learn the name of this Japanese, Fujii?

A Because I was told by the Filipino boys of the Japanese that his name is Fujii.

Q Did you actually help bury the bodies of these two men when the Japanese left the barrio?

A Yes, I have.

Q Did anything else happen before the Japanese left the barrio?

A Yes, there was.

After the killing of the two persons, Akaw and the Filipino -- and while the men were standing there trembling with fear, the Japanese picked up three girls. He brought the three girls up, one by one, and they went up one after

another; they, the Japanese.

Q Just what do you mean by "they went up one after another"?

A I mean every time the two Japanese come up, two by two at the time, not one by one.

Q What did the Japanese do?

A I don't know what the Japanese did upstairs in the house because the door was closed; however, we could hear the weeping and crying of the women.

Q And what happened after? Did the three girls come down with you to the group of people in the barrio square later?

A They went down after the Japanese left.

Q Did any of the three girls ever tell you what the Japanese had done to them?

A One of them divulged to us that the Japanese were indecent. They disrobed.

Q Do you remember whether Fujii was one of the Japanese that went up to the house where the three girls were?

A Yes, he also went.

Q Were either of these two men killed--Akaw or the Filipino--guerrillas to the best of your knowledge?

A In my belief the Chinese was not a guerrilla and the Filipino -- I don't know because he only passed by carrying rice.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q How long have you lived in the barrio of Agbobolo?

A About twenty years.

Q Were there any combat operations taking place up there in September 1943?

A What I know is the penetration.

Q What do you mean by "penetration"?

A What I mean by "penetration" is that when the Japanese arrived in that vicinity.

Q How many other Japanese were with Fujii when he killed these two people?

A I did not count the Japanese but I estimate the Filipinos with them about sixteen.

Q Have you ever heard the name of Captain Kengo Watanabe, a Japanese officer?

A I have not heard of him because I didn't go around, because I was afraid.

Q When did the Filipino boys tell you Fujii's name?

A I was informed by the Filipino boys right at the time when they arrived in our barrio.

Q Had you ever seen Fujii before that?

A Yes, I saw.

Q Where did you see him?

A In our barrio.

Q Had he been there for a long time?

A He only passed through our barrio because he lives in the garrison at Culasi and when he passed through our barrio, that was the time I saw him.

Q Did he shoot either of these two people who were killed.

A No, he was beheaded. They were beheaded with his saber.

Q A moment ago you said that Fujii asked this Chinese and Filipino one or two questions. How do you know that?

A I knew that he was asked a few questions because I saw them talk at a distance. Meanwhile, the Chinaman and the man who passed by were crying.

Q What dialect are you now speaking?

A Visayan dialect.

Q Do you understand any Japanese?

A No.

Q Do you know whether or not Fujii spoke Visayan?

A No, he did not speak Visayan.

Q Were there other witnesses besides yourself to these two killings?

A Here none, I am the only one.

Q About what time of the day was the first one killed?

A About twelve o'clock.

Q Was that at noon?

A Yes, noontime.

Q Who was that?

A Akaw.

Q How long after Akaw was killed did they kill the Filipino, who was carrying rice, I believe?

A Just right after Akaw was killed the other fellow, the one carrying rice, was also killed.

Q Did you see these two people captured?

A Yes, I saw.

Q How far from the house were you where these girls were taken?

A From where I stand up to about that post is the distance, approximately two meters. That is the house there and here is the place where I stood.

Q How far was that house from the place where these two people were killed?

A About five meters.

Q Were you tied up at the time the two people were killed?

A No.

Q Were you tied up at any time?

A I was never tied because I was made to carry water for cooking.

Q Were the bodies of these two people who were killed buried the same day?

A No, it was buried the day following.

Q Did you help bury them?

A Yes, I did.

Q Where were they buried?

A Right in the center of our barrio.

Q Was there a cemetery there?

A None.

Q Did you ever work for or were you a member of the guerrillas?

A No.

Q Were there any guerrillas around that area at all at that time?

A I don't know whether there was or there was not.

Q You never heard of or saw any guerrillas down in or around your barrio of Agbobolo during the month of September 1943, is that correct?

A None.

LIEUTENANT MC CULLOUGH: That's all.

LIEUTENANT SHEPHERD: Has the Commission any questions to ask the witness?

COLONEL HAMBY: No questions by the Commission. The witness is excused.

(Witness excused.)

CAPTAIN YARD: May it please the Commission, specification 6 refers to Agboboto whereas your map has the name spelled as "Agbobolo." The map is correct and we at

this time would like to correct the specification, if defense has no objection, to read "l" instead of "t."

COLONEL HAMBY: So ordered.

CAPTAIN YARD: Sir, the next witness' testimony will concern two specifications. It will be quite lengthy.

COLONEL HAMBY: The Commission will recess.

(The Commission thereupon recessed at 1620 hours, 15 April 1946.)

Pros Ex #1

RESTRICTED

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

AG 000.5 (5 Dec 45) LS

APO 500
5 December 1945

SUBJECT: Regulations Governing the Trials of Accused War Criminals.

TO : Commander-in-Chief, United States Army Forces, Pacific, APO 500
Commanding General, Sixth Army, APO 442
Commanding General, Eighth Army, APO 343
Commanding General, XXIV Corps, APO 235

The following rules and regulations will govern the trials of persons, units and organizations accused as war criminals:

1. ESTABLISHMENT OF MILITARY COMMISSIONS.

a. General. Persons, units and organizations accused as war criminals will be tried by military commissions to be convened by , or under the authority of, the Supreme Commander for the Allied Powers.

b. Number and Types. The commissions will be established dependent upon the number, nature of the offenses involved and the offenders to be tried. Such commissions may include, among others, international military commissions consisting of representatives of several nations or of each nation concerned, appointed to try cases involving offenses against one (1) or more nations.

2. JURISDICTION.

a. Over Persons. The military commissions appointed hereunder shall have jurisdiction over all persons charged with war crimes who are in the custody of the convening authority at the time of the trial.

b. Over Offenses.

(1) Military commissions established hereunder shall have jurisdiction over all offenses including, but not limited to, the following:

(a) The planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

Prosecution's Exhibit #1
U.S.A. vs Takeshi KONO
15 April 1946

RESTRICTED

investigated, nor if he is required as a witness in that case. A commission may consist of Army, Navy or other service personnel, or of both service personnel and civilians. One specially qualified member shall be designated as the law member whose ruling is final insofar as concerns the commission on an objection to the admissibility of evidence offered during the trial.

d. Voting. Except as to the admissibility of evidence, all rulings and findings of the commission shall be by majority vote, except that conviction and sentence shall be by the affirmative votes of not less than two-thirds (2/3) of the members present.

e. Presiding Member. In the event that the convening authority does not name one of the members as the presiding member, the senior officer among the members of the commission present shall preside, or such other member as the senior officer may designate.

4. PROSECUTORS.

a. Appointment. The convening authority shall designate one or more persons to conduct the prosecution before each commission. Where offenses involve nationals of more than one nation, each nation concerned, in the discretion of the convening authority, may be represented among the prosecutors.

b. Duties. The duties of the prosecutors are:

(1) To prepare and present charges and specifications for reference to a commission.

(2) To prepare cases for trial and to conduct the prosecution before the commission of all cases referred for trial.

5. POWERS AND PROCEDURE OF COMMISSIONS.

a. Conduct of the Trial. A commission shall:

(1) Confine each trial strictly to a fair, expeditious hearing on the issues raised by the charges, excluding irrelevant issues or evidence and preventing any unnecessary delay or interference.

(2) Deal summarily with any contumacy or contempt, imposing any appropriate punishment therefor.

(3) Hold public sessions except when otherwise decided by the commission.

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(1) Military commissions established hereunder shall have jurisdiction over all offenses including, but not limited to, the following:

(a) The planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

Prosecution's Exhibit #1
U.S.A. vs Takeshi KONO
15 April 1946

RESTRICTED

Pros Ex #1

RESTRICTED

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

AG 000.5 (5 Dec 45) LS

APO 500
5 December 1945

SUBJECT: Regulations Governing the Trials of Accused War Criminals.

TO : Commander-in-Chief, United States Army Forces, Pacific, APO 500
Commanding General, Sixth Army, APO 442
Commanding General, Eighth Army, APO 343
Commanding General, XXIV Corps, APO 235

The following rules and regulations will govern the trials of persons, units and organizations accused as war criminals:

1. ESTABLISHMENT OF MILITARY COMMISSIONS.

a. General. Persons, units and organizations accused as war criminals will be tried by military commissions to be convened by , or under the authority of, the Supreme Commander for the Allied Powers.

b. Number and Types. The commissions will be established dependent upon the number, nature of the offenses involved and the offenders to be tried. Such commissions may include, among others, international military commissions consisting of representatives of several nations or of each nation concerned, appointed to try cases involving offenses against one (1) or more nations.

2. JURISDICTION.

a. Over Persons. The military commissions appointed hereunder shall have jurisdiction over all persons charged with war crimes who are in the custody of the convening authority at the time of the trial.

b. Over Offenses.

(1) Military commissions established hereunder shall have jurisdiction over all offenses including, but not limited to, the following:

(a) The planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

Prosecution's Exhibit #1
U.S.A. vs Takeshi KONO
15 April 1946

RESTRICTED

(b) Violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory; murder or ill-treatment of prisoners of war or internees or persons on the seas or elsewhere; improper treatment of hostages; plunder of public or private property; wanton destruction of cities, towns or villages; or devastation not justified by military necessity.

(c) Murder, extermination, enslavement, deportation and other inhuman acts committed against any civilian population before or during the war, or persecutions on political, racial or religious grounds in execution of, or in connection with, any crime defined herein, whether or not in violation of the domestic laws of the country where perpetrated.

(2) The offense need not have been committed after a particular date to render the responsible party or parties subject to arrest, but in general should have been committed since or in the period immediately preceding the Mukden incident of September 18, 1931.

3. MEMBERSHIP OF COMMISSION.

a. Appointment. The members of each military commission will be appointed by the Supreme Commander for the Allied Powers, or under authority delegated by him. Alternates may be appointed by the convening authority. Such alternates shall attend all sessions of the commission, and in case of illness or other incapacity of any principal member, an alternate shall take the place of that member. Any vacancy among the members or alternates, occurring after a trial has begun, may be filled by the convening authority, but the substance of all proceedings had and evidence taken in that case shall be made known to that new member or alternate in open court before the trial proceeds.

b. Number of Members. Each commission shall consist of not less than three (3) members.

c. Qualifications. The convening authority shall appoint to the commission persons whom he determines to be competent to perform the duties involved and not disqualified by personal interest or prejudice, provided that no person shall be appointed to hear a case which he personally

investigated, nor if he is required as a witness in that case. A commission may consist of Army, Navy or other service personnel, or of both service personnel and civilians. One specially qualified member shall be designated as the law member whose ruling is final insofar as concerns the commission on an objection to the admissibility of evidence offered during the trial.

d. Voting. Except as to the admissibility of evidence, all rulings and findings of the commission shall be by majority vote, except that conviction and sentence shall be by the affirmative votes of not less than two-thirds (2/3) of the members present.

e. Presiding Member. In the event that the convening authority does not name one of the members as the presiding member, the senior officer among the members of the commission present shall preside, or such other member as the senior officer may designate.

4. PROSECUTORS.

a. Appointment. The convening authority shall designate one or more persons to conduct the prosecution before each commission. Where offenses involve nationals of more than one nation, each nation concerned, in the discretion of the convening authority, may be represented among the prosecutors.

b. Duties. The duties of the prosecutors are:

(1) To prepare and present charges and specifications for reference to a commission.

(2) To prepare cases for trial and to conduct the prosecution before the commission of all cases referred for trial.

5. POWERS AND PROCEDURE OF COMMISSIONS.

a. Conduct of the Trial. A commission shall:

(1) Confine each trial strictly to a fair, expeditious hearing on the issues raised by the charges, excluding irrelevant issues or evidence and preventing any unnecessary delay or interference.

(2) Deal summarily with any contumacy or contempt, imposing any appropriate punishment therefor.

(3) Hold public sessions except when otherwise decided by the commission.

(4) Hold each session at such time and place as it shall determine, or as may be directed by the convening authority.

b. Rights of the Accused. The accused shall be entitled:

(1) To have in advance of trial a copy of the charges and specifications clearly worded so as to apprise the accused of each offense charged.

(2) To be represented, prior to and during trial by counsel appointed by the convening authority or counsel of his own choice, or to conduct his own defense.

(3) To testify in his own behalf and have his counsel present relevant evidence at the trial in support of his defense, and cross-examine each adverse witness who personally appears before the commission.

(4) To have the substance of the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them.

c. Witnesses. The Commission shall have power:

(1) To summon witnesses and require their attendance and testimony under penalty; to administer oaths or affirmations to witnesses and other persons and to question witnesses.

(2) To require the production of documents and other evidentiary material.

(3) To delegate to the Prosecutors appointed by the convening authority the powers and duties set forth in (1) and (2), above.

(4) To have evidence taken by a special commissioner appointed by the commission.

d. Evidence.

(1) The commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or such as in the commission's opinion would have probative value in the mind of a reasonable man. The commission

shall apply the rules of evidence and pleading set forth herein with the greatest liberality to achieve expeditious procedure. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted:

(a) Any document irrespective of its classification which appears to the commission to have been signed or issued by any officer, department, agency or member of the armed forces of any government without proof of the signature or of the issuance of the document.

(b) Any report which appears to the commission to have been signed or issued by the International Red Cross or a member thereof, or by a doctor of medicine or any medical service personnel, or by an investigator or intelligence officer, or by any other person whom the commission considers as possessing knowledge of the matters contained in the report.

(c) Affidavits, depositions or other signed statements.

(d) Any diary, letter or other document, including sworn or unsworn statements, appearing to the commission to contain information relating to the charge.

(e) A copy of any document or other secondary evidence of its contents, if the original is not immediately available.

(2) The commission shall take judicial notice of facts of common knowledge, official government documents of any nation, and the proceedings, records and findings of military or other agencies of any of the United Nations.

(3) A commission may require the prosecution and the defense to make a preliminary offer of proof, whereupon the commission may rule in advance on the admissibility of such evidence.

(4) If the accused is charged with an offense involving concerted criminal action upon the part of a military or naval unit, or any group or organization, evidence which has been given previously at a trial resulting in the

conviction of any other member of that unit, group or organization, relative to that concerted offense, may be received as prima-facie evidence that the accused likewise is guilty of that offense.

(5) The findings and judgment of a commission in any trial of a unit, group, or organization with respect to the criminal character, purpose or activities thereof shall be given full faith and credit in any subsequent trial, by that or any other commission, of an individual person charged with criminal responsibility through membership in that unit, group or organization. Upon proof of membership in that unit, group or organization convicted by a commission, the burden shall be on the accused to establish by proof any mitigating circumstances relating to his membership or participation therein.

(6) The official position of the accused shall not absolve him from responsibility, nor be considered in mitigation of punishment. Further, action pursuant to order of the accused's superior, or of his government, shall not constitute a defense, but may be considered in mitigation of punishment if the commission determines that justice so requires.

(7) All purported confessions or statements of the accused shall be admissible without prior proof that they were voluntarily given, it being for the commission to determine only the truth or falsity of such confessions or statements.

e. Trial Procedure. The proceedings at each trial will be conducted substantially as follows, unless modified by the commission to suit the particular circumstances:

(1) Each charge and specification will be read, or its substance stated, in open court.

(2) The presiding member shall ask each accused whether he pleads "Guilty" or "Not Guilty".

(3) The prosecution shall make its opening statement.

(4) The presiding member may, at this or any other time, require the prosecutor to state what evidence he proposes to submit to the commission, and the commission thereupon may rule upon the admissibility of such evidence.

(5) The witnesses and other evidence for the prosecution shall be heard or presented. At the close of the case for the prosecution, the commission may, on motion of the defense for a finding of not guilty, consider and rule whether the evidence before the commission supports the charges against the accused. The commission may defer action on any such motion and permit or require the prosecution to reopen its case and produce any further available evidence.

(6) The defense may make an opening statement prior to presenting its case. The presiding member may, at this or any other time, require the defense to state what evidence they propose to submit to the commission, whereupon the commission may rule upon the admissibility of such evidence.

(7) The witnesses and other evidence for the defense shall be heard or presented. Thereafter, the prosecution and defense may introduce such evidence in rebuttal as the commission may rule admissible.

(8) The defense, and thereafter the prosecution, shall address the commission.

(9) The commission thereafter shall consider the case in closed session and unless otherwise directed by the convening authority, announce in open court its judgment and sentence, if any. The commission may state the reasons on which the judgment is based.

f. Record of Proceedings. Each commission shall make a separate record of its proceedings in the trial of each case brought before it. The record shall be prepared by the prosecutor under the direction of the commission and submitted to the defense counsel. The commission shall be responsible for its accuracy. Such record, certified by the presiding member of the commission or his successor, shall be delivered to the convening authority as soon as possible after the trial.

g. Sentence. The commission may sentence an accused, upon conviction, to death by hanging or shooting, imprisonment for life or for any less term, fine or such other punishment as the commission shall determine to be proper. The commission may also order confiscation of any property of a convicted accused, deprive that accused of any stolen property or order its delivery to the Supreme Commander for the Allied Powers for disposition as he shall find to be proper, or may order restitution with appropriate penalty in cases of default.

h. Approval of Sentence. No sentence of a military commission shall be carried into effect until approved by the officer who convened the commission, or his successor. Such officer shall have authority to approve, mitigate, remit in whole or in part, commute, suspend, reduce or otherwise alter the sentence imposed, or (without prejudice to accused) remand the case for rehearing before a new military commission; but he shall not have authority to increase the severity of the sentence. No sentence of death shall be carried into execution until confirmed by the Supreme Commander for the Allied Powers. Except as herein provided, the judgment and sentence of a commission shall be final and not subject to review.

6. RULE MAKING POWER.

Supplementary Rules and Forms. Each commission shall adopt rules and forms to govern its procedure, not inconsistent with the provisions hereof, or such rules and forms as may be prescribed by the convening authority or by the Supreme Commander for the Allied Powers.

By command of General MacARTHUR:

H. W. ALLEN,
Colonel, A.G.D.,
Asst Adjutant General.

Pros Ex # 2

PANAY ISLAND

Scale 1:1,000,000

10 5 0 10 20 30 MILES

122°30'

12°

11°

ROMBLON IS.

Despujol

TABLAS IS.

SIBUYAN IS.

SIBUYAN SEA

JINTOTOLO CHANNEL

CAPIZ

ANTIQUE

ILOILO

PANAY GULF

GUIMARAS ISLAND

Banga
Balete
Altavas
Batan
Capiz
Libacao
Estancia
Pagsan
Ticongcahoy
Maligaya
Cadagmayan
Sampanongbolo
Dumarao
Tapaz
Calamongan
Sara
Alacinay
Nabitasan
Gibato
Gubatan
Calamigan
Agbobato
Aja
Progreso
Madalag
Lungao
Passi
Jimomod
Nueva Invencion
Borotac Viejo
A
Leon
Buenavista
Hamog
San Jose La Paz
San Jose de Buenavista
Cogbang
Parcon
Tigbauon
Buenavista
Supang
Maringyan
Miagao
Parara
ILOILO

Prosecution Exh. # 2
USA vs. Takeshi Kono
15 April 1946

Drawn by:
J.G. Gutierrez
2nd Lt. CE
3/15/46

Prosecution's Exhibit #3
U.S.A. vs Takeshi KONO
15 April 1946

Prosecution's Exhibit #4
U.S.A. vs Takeshi KONO
15 April 1946

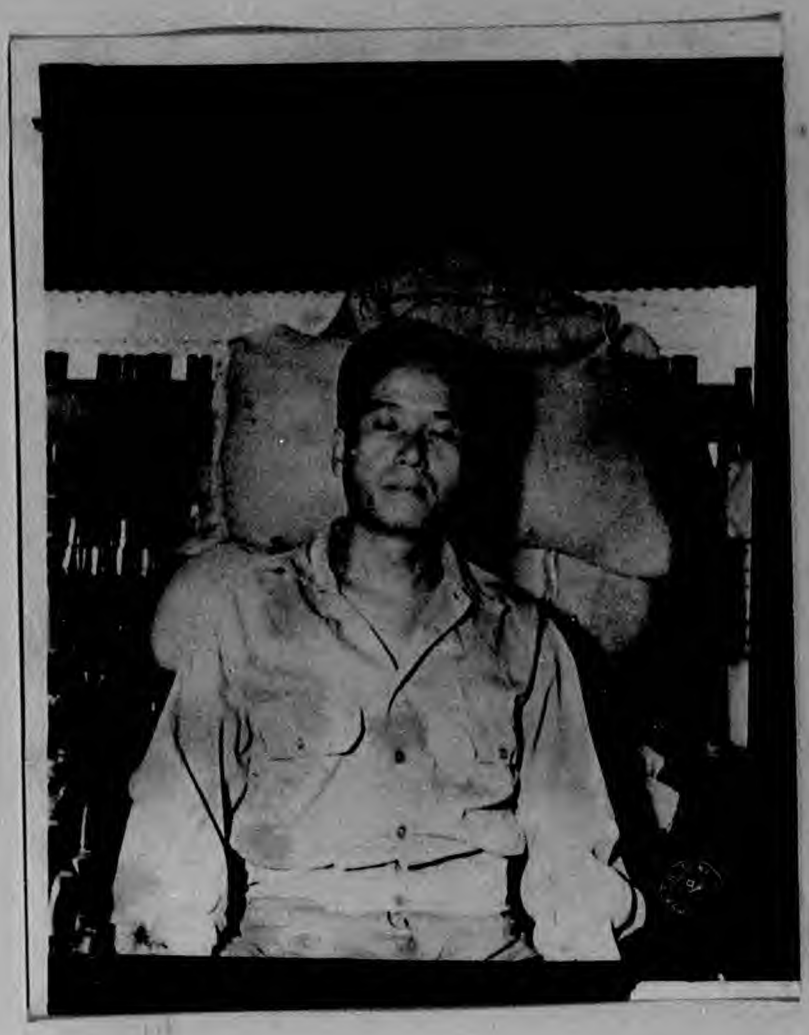
Prosecution's Exhibit #5
U.S.A. vs Takeshi KONO
15 April 1946

Prosecution's Exhibit #6
U.S.A. vs Takeshi KONO
15 April 1946

Prosecution's Exhibit #7
U.S.A. vs Takeshi KONO
15 April 1946

Prosecution's Exhibit #8
U.S.A. vs Takeshi KONO
15 April 1946

Prosecution's Exhibit #9
U.S.A. vs Takeshi KONO
15 April 1946



Prosecution's Exhibit #10
U.S.A. vs Takeshi KONO
15 April 1946

Prosecution's Exhibit #11
U.S.A. vs Takeshi KONO
15 April 1946

Prosecution's Exhibit #12
U.S.A. vs Takeshi KONO
15 April 1946

Prosecution's Exhibit #13
U.S.A. vs Takeshi KONO
15 April 1946

Prosecution's Exhibit #14
U.S.A. vs Takeshi KONO
15 April 1946

(2055)

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
vs	)	
	)	PUBLIC TRIAL
TAKESHI KONO	)	
	)	

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VOLUME II

PAGES 155 to 221

MANILA, P. I.

DATE: 16 April 1946

COPY NO.: 3

CERTIFICATION

This certifies that this volume is a part of the proceedings of the Military Commission appointed by Paragraph 21, Special Orders No. 85, Headquarters, United States Army Forces, Western Pacific, dated 12 April 1946, in the trial of the case of the United States of America v. Takeshi Kono.

Dated 7 May 1946

W. R. Hamby

WILLIAM R. HAMBY
Colonel, CAV
President of Commission

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
vs	)	PUBLIC TRIAL
	)	
TAKESHI KONO	)	
	)	

Court No. 2-B
High Commissioner's Residence,
Manila, P. I.
16 April 1946

Met, pursuant to adjournment, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL WILLIAM R. HAMBY, CAV, President and Law Member
COLONEL JOHN L. GOFF, CAC
COLONEL JOSEPH H. WARREN, INF (Excused)
LIEUTENANT COLONEL JOHN A. CHASE, (CMP) FA
CAPTAIN JACK ELLINGSON, CMP

APPEARANCES:

FOR THE PROSECUTION:

CAPTAIN WILLIAM S. YARD, JAGD, Chief Prosecutor
1ST LIEUTENANT ADDISON T. SHEPHERD, JAGD, Asst. Prosecutor
2ND LIEUTENANT WILLIAM E. MURPHY, INF, Asst. Prosecutor

FOR THE DEFENSE:
1ST LIEUTENANT CLARENCE L. WATERS, CMP, Chief Defense Counsel
2ND LIEUTENANT JOHN E. MC CULLOUGH, TC, Asst. Defense Counsel

INTERPRETERS FOR THE COMMISSION:
T/SGT. YOSHIAKI OGITA
T/SGT. ROY KATO
LUCY P. CASANOVAS
PRAXEDIO VILLALUZ
PEDRO GENOVES
CAPTAIN JESUS A. LAGDAMEO, JR.
T/4 GEORGE USHIJIMA

REPORTERS FOR THE COMMISSION:
ARNOLD COHEN
WILLIAM COHEN

I N D E X

WITNESSES

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P R O C E E D I N G S

The Commission convened, pursuant to adjournment, at 0830, 16 April 1946, at Court No. 2-B, High Commissioner's Residence, Manila, P. I.

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: Sir, may the record show that the following members of the Commission are present: Colonel Hamby, Colonel Goff, Lieutenant Colonel Chase, Captain Ellingson. The accused, together with defense counsel Lieutenant McCullough, and his personal interpreter and members of the prosecution are present.

Sir, we have an additional interpreter to be sworn.

COLONEL HAMBY: Swear the interpreter.

(T/4 George Ushijima was sworn as Official Court Interpreter.)

RYOICHI TOZUKA

a witness for the prosecution, was recalled and testified as follows through interpreters Kato and Ushijima:

DIRECT EXAMINATION (CONT'D.)

CAPTAIN YARD: Will you remind the witness that he is still under the oath today to which he was administered yesterday.

(Discussion ensued between interpreter and witness.)

CAPTAIN YARD: Pursuant to request of defense counsel yesterday, cross-examination of the witness, Ryoichi Tozuka, was postponed until this morning. With the Commission's permission, prosecution would like to direct two or three additional questions to this witness before we turn him over to the defense for cross-examination.

COLONEL HAMBY: Proceed.

BY CAPTAIN YARD:

Q What was the rank of Hajime Fujii?

A He was a first lieutenant.

Q What was the rank of Noriyuki Otsuka?

A Second lieutenant.

Q What was the rank of Toshimi Kumai?

A First lieutenant.

Q What was the rank of Chiyomi Toyota?

A First lieutenant.

Q What was the rank of Morio Matsuzaki?

A He was a sergeant.

Q What was the rank of Fusataro Shin?

A Warrant officer.

Q What was the rank of Tadataka Kuwano?

A Sergeant Major.

Q What was the rank of Jiro Motoki?

A Captain.

Q What was the rank of Tokizo Makita?

A Sergeant major.

Q What was the rank of Hisaki Itai?

A Leading private.

Q While you were in command of forces on Panay Island, were there any military trials of any nature held on Panay Island?

A There was none on Panay Island.

Q If trials were given anyone, where would that person be sent?

A He would be sent to Manila.

Q Did you ever receive any complaints concerning the manner in which Captain Kengo Watanabe treated civilians on Panay Island?

A I did not know until the time of surrender, but after surrender I heard about it.

Q Did you not hear in December of 1943 that Captain Kengo Watanabe was mistreating guerrilla suspects?

A No.

Q In December of 1943, did you warn Captain Kengo Watanabe not to treat civilians too roughly?

A I do hot remember.

Q Did you change his position in December of 1943 to the commander of a weapons unit?

A I changed him to a heavy-weapons commander, in command of machine-guns and mortars.

CAPTAIN YARD: You may cross-examine.

LIEUTENANT COLONEL CHASE: Will you clear up the rank of those other four people, including that other Watanabe?

CAPTAIN YARD: I thought that appeared in the testimony, sir, but I'll ask the witness again.

BY CAPTAIN YARD:

Q What was the rank of Hidemi Watanabe?

A Lieutenant colonel.

Q What was the rank of Kengo Watanabe?

A While he was in my unit he was a captain.

LIEUTENANT COLONEL CHASE: The last three on the list were the other ones.

Q What was the rank of Masafuji Hamamoto?

A I do not remember. He was a noncomissioned officer but I do not know if he was a sergeant or a corporal.

Q What was the rank of Katsuji Shinmio?

A I do not know that person.

Q What was the rank of Seishi Matsura?

A He was not of my unit so I do not know.

CAPTAIN YARD: Is there anything further, sir?

LIEUTENANT COLONEL CHASE: No.

CAPTAIN YARD: You may cross-examine.

CROSS-EXAMINATION

LIEUTENANT MC CULLOUGH: Before I start, for the Commission's information, our files, sir, have Seishi Matsura as private.

Q At my request, did you draw a chart showing the chain of command, both under and over you, starting with July of 1943?

A That was written by Lieutenant Colonel Watanabe.

Q Did you also make up a chart showing the chain of command under you and also over you?

A Yes.

Q I hand you a copy of the translation of that chain of command which has been identified by the reporter as Defense's Exhibit A and ask you to look it over.

A There is no mistake.

LIEUTENANT MC CULLOUGH: If the Commission please, we drew this up rather hastily last night and request permission to withdraw it so it can be photostated so that we can have the correct number of copies for the record. We have previously shown it to the prosecution. I might explain further for the record that the Japanese characters under the box is a Japanese translation of what is contained in the box.

COLONEL HAMBY: Has the prosecution seen it?

LIEUTENANT MC CULLOUGH: The prosecution has examined it.

CAPTAIN YARD: Yes, sir, we have no objection to it.

(Defense's Exhibit A was received into evidence.)

BY LIEUTENANT MC CULLOUGH:

Q Between the months of July and September 1943 who was your immediate commander?

A Lieutenant General Takeshi Kono.

Q Do you know who was his commanding officer --

A At that time, Major General Takeshi Kono.

Q The question is, "Who was Lieutenant General Kono's commanding officer at that time?"

A Lieutenant General Kuroda.

Q In your answer a moment ago when you answered that he was a major general, did you mean at that time that General Kono was a major general?

A Yes, at that time he was a major general.

Q Do you know when Lieutenant General Kuroda took command of the 14th Army?

A I do not remember exactly.

Q Do you know what year it was in?

A It was in 1943.

Q Do you know whether or not Lieutenant General Tanaka was before him as the commanding officer of the 14th Army?

A Who is "him"?

Q By "him," I mean General Kuroda.

A Yes.

Q Do you know how long Lieutenant General Tanaka was the commanding general of the 14th Army?

A I do not remember the dates exactly.

Q Do you know whether or not it was in 1943?

A When he quit as the army commander it was in 1943.

Q When did you enter under the command of General Kono?

A I believe it was May 7, 1943.

Q At that time what unit did you command?

A 37th Independent Infantry Security Battalion.

Q Where was the headquarters of that battalion at that time?

A It was in Iloilo City, Iloilo Province.

Q Where in Iloilo City was your headquarters?

A It was at the Jaro High School in Iloilo City.

Q Did you move your headquarters from that place?

A Yes.

Q Did you move your headquarters to the Iloilo Business School?

A On July 12, 1944, we changed our headquarters to the business school in Jaro.

Q How long did ycu remain at that place, using that as your headquarters in Jaro?

A Until the end of August 1944.

Q At the end of August did you again move your headquarters in Jaro?

A Yes.

Q Where did you move them?

A We changed to a place called Moro in Iloilo City, where formerly the police headquarters were located.

Q How long did you use those as your headquarters?

A Until the landing of the American Army.

Q What was the date of the American landing?

A I remember it as being March 18, 1944.

Q After the American landing where was your headquarters?

A At a mountain called Bocari to the north of Iloilo City.

Q When you first commanded at Iloilo, what was the district that was physically under your control?

A The entire province of Iloilo.

Q How long then did you have that province under your command?

A Until the middle of December 1943.

Q I hand you what has been identified in the record as Prosecution's Exhibit No. 2 (handed to witness), and ask you to state and also to draw on this map the district under your command after December 1943.

(Witness marks map.)

A Everything below this line (indicating).

Q Everything below the line on that map (indicating)?

A Yes.

Q I mark the letter "A" at the end of that line that you just drew; is that correct?

A Yes.

Q Now, was the area under your command again changed at the end of 1944?

A Yes.

Q Over what men and over what territory did you then take charge?

A After November 1944, the territory became the entire island of Panay.

Q I again refer you to Defense's Exhibit A , and ask you if that correctly represents the change of command for the period shown on that exhibit (handed to witness):

A Yes.

Q Were you ever in direct command of any military police or Kempei Tai in or from Panay?

A No.

Q Did your unit ever conduct any coordinated operations between your unit and the Kempei Tai or the military police?

A Yes.

Q Will you explain to the Commission the relationship between the military police or Kempei Tai and your unit and those coordinated operations?

A What I mean by "coordinated actions" is that the Kempei unit gave one portion of their unit to our unit and I had no command over them.

Q Who gave those Kempei Tai their orders?

A The Kempei Tai commander.

Q Could your unit be called a defense unit?

A It is not an official name given by the higher authorities, but because our duties were of a guard nature we were called a guard unit, security unit.

Q What were the general responsibilities assigned then to your unit as a security unit?

A The mission of our unit was to fight the enemies which may come from the outside or inside of our territories and to safeguard our territories.

What I mean by "those enemies from the outside" would refer to the American troops.

For this so-called attack from the Americans, we constructed fortresses and repaired transportation and communication networks and built airports and trained troops that we could fight against the Americans when they landed, or when they came. And for the

preparations on the inside, I mean that it would be difficult for us to cope with the Americans if we had guerillas within our territory. For that reason we went on punitive expeditions against the guerillas. Furthermore, we tried to get the civilians to like us and work on our side. The main objection of punitive expeditions was to capture guerilla commanders and wireless transmitters because in that way we can destroy the command function and thereby ruin the guerillas. The main objective was to fight the Americans, and as a means toward that end we went after the guerillas.

COLONEL HAMBY: The Commission will take a ten-minute recess.

(Short recess.)

COLONEL HAMBY: The Commission will be in session.

LIEUTENANT MC CULLOUGH (To interpreter): Would you remind the Colonel that he is still under oath?

(Discussion ensued between the interpreter and the witness.)

BY LIEUTENANT MC CULLOUGH:

Q What types of guerrilla activity were there on Panay at the time you were stationed there?

A Mainly the guerrillas attacked small units within our units. They would attack our small detachments that were moving and also small detachments that were stationed somewhere. They attacked automobiles by using explosives; they destroyed bridges, railroads, and they destroyed communication lines, such as telegraph wires; they destroyed water pipes; they abducted and killed pro-Japanese Filipinos; they also abducted women and girls; they burned homes of the residents. This is

generally the type of warfare the guerrillas were conducting.

Q Did your unit conduct any routine operations against such guerrilla activity?

A We conducted punitive expeditions.

Q Did you conduct any concerted or joint operations against the guerrillas?

A Yes, sir, we did.

Q Were those operations ordered by a brigade headquarters and taking place within specific sectors and over a designated period of time?

CAPTAIN YARD: Pardon me, please. Will the reporter read that back.

(The last question was read by the reporter.)

A Since punitive expeditions were the mission of the unit, the unit commander may conduct punitive expeditions in his own territory without orders from higher up.

Q Was the method of attack limited by general or specific directives issued by Lieutenant General Kono's headquarters?

A We were instructed to capture guerrilla leaders and wireless equipment. But in doing so we were instructed not to harm innocent residents. The unit commanders acted under these instructions. At times General Kono would have my unit and another unit coordinate and conduct an expedition.

Q Can you tell the Commission what was in paragraph 2 of the operation orders issued by General Kono's headquarters--

INTERPRETER OGITA: Please read that.

(The last question was read by the reporter.)

Q -- in relation to guerrillas?

A I know the general outline of it.

Q Will you tell what that is?

CAPTAIN YARD: Just a moment, please. If the witness is in possession of a copy of the operation orders, we believe it would be better procedure to introduce these operational orders. If not, we would like to know the manner in which the witness is recalling this paragraph of the operation orders in order to get the best evidence before the Commission in this latter period.

LIEUTENANT MC CULLOUGH: Prosecution's point is well taken. I don't have the orders; therefore, it will be necessary to probably lay a proper foundation for that question. I agree with him. I am a little hasty in an effort to save time. However, we can show, I believe, why those orders aren't available, and why it is necessary to use oral testimony in relating to them as the best evidence available.

CAPTAIN YARD: I will accept the statement of the defense counsel as to why it is not available, but I am more interested now in how the witness is able to recall the operations.

COLONEL HAMBY: Proceed.

BY LIEUTENANT MC CULLOUGH:

Q Do you recall paragraph 2 of the operation orders? Will you answer that yes or no.

A Yes.

Q Will you state to the Commission how you remember paragraph 2 of the operation orders?

A Operational orders always concerned punitive expeditions. Paragraph 2 of these operational orders showed the general policy, and since it is always established, paragraph 2 is the same in all orders; therefore, I remember it.

Q Now, will you state to the Commission, to the best of your recollection, what was contained in paragraph 2 of the operation orders?

A Guerrilla leaders and wireless equipment will be captured as quickly as possible, and peace and order will be restored.

Q Did General Kono's headquarters issue any prohibitive methods in accomplishing your mission?

A Yes.

Q What methods were prohibited by General Kono's headquarters?

A The difference between guerrillas and residents must be made. The residents must not be bound and they should be treated kindly so that we can get their cooperation. Such a clause was in the operational orders, and I have often heard it in instructions.

Q Did General Kono's headquarters prohibit the use of certain methods in these tactical or combat operations against the guerrillas?

A To the extent which I have just related.

Q Let me ask it this way: Did General Kono's headquarters ever issue directives to you not to use artillery or air bombardment in your tactical setup against the guerrillas?

A Yes.

Q What was your usual method of operation?

A The weapons that I used were the rifles, light machine-guns, hand grenades, and knee mortars. Those were the only weapons that I used.

Q In a few words would you tell what the guerrilla situation on Panay was at that time?

A Stating it simply, the guerrillas had a very large strength. They were extremely active and they carried out cruel activities.

Q Do you know what the strength of the guerrilla forces was at that time on Panay?

A This is my estimation: There were about 20,000 armed guerrillas and about 150,000 guerrillas who were cooperating with them.

Q In those that were --

CAPTAIN YARD: Just a moment, please. Pardon me. What time was this that he places his estimate?

Q The time that you are referring to is what; what time do you have in mind?

A 1943, 1944, and 1945 when the Americans landed.

Q What was the strength of your garrison at its height?

A The strength of my unit at its height was around 700.

Q In these 150,000 supporters that you named, did they use any women and children in their activities?

A Yes.

Q Do you know what the condition of the equipment used by the guerrillas during that period of time was in?

A Yes.

Q What type of equipment were they using?

A They had water-cooled heavy machine-guns, mortars, rifles, carbines, Thompsons, hand grenades, pistols, and explosives. They also used knives, spears, and shotguns, and they also had wireless equipment.

Q Did General Kono ever at any time go on any of those punitive expeditions against guerrillas?

A No.

Q Do you know who the prominent guerrilla leaders were on Panay during 1943 and 1944?

A I don't know them all, but I will tell the names of the ones I do remember: Confesor, Peralta, Relunia, Chavez, Dator, Hernandez, Serran, Golez, Muyco, Garcia, and Leocario. They are about the only ones that I can remember at the present time.

Q Do you recall in July 1943 receiving an operation order from General Kono's headquarters relating to the guerrilla Confesor whom you have just named?

A Yes, I remember.

Q Will you tell, to the best of your recollection, what was in the order and what was done about it.

A I remember that the order stated that we have information that Confesor is in the vicinity of the Bocari Mountain.

A punitive expedition will be carried out in Bocari and the wireless equipment which he is using will be captured. Peace and order will be maintained in the vicinity.

Q How many men were in that operation and where did it go from and to?

A For this punitive expedition I wanted to use as many men as possible from my unit; however, this could not be done. So about 300 men were used. We left Iloilo, passed through Leon, and carried out a punitive expedition in the vicinity of Bocari Mountain for about two weeks. One or two wireless equipments were captured but we were not able to capture the guerrilla leader.

Q Was the end of that operation near San Miguel?

A That is how I remember it. I think we came out from San Miguel to Tigbauan.

Q Was a battle report sent to General Kono's headquarters regarding that operation?

A I remember that we sent one.

Q Do you recall the substance of what it contained?

A I remember that it contained the report about the capture of the wireless equipment and also the capturing of a few rifles and ammunition.

Q In August of 1943 did you receive an operation order from General Kono's headquarters regarding guerrilla activities on Guimaras Island?

A Yes.

Q Will you tell where that operation started and ended and what the result of it was?

A We left Iloilo, landed at Buenavista. My outfit was assigned the northern part of Guimaras Island, so we carried

out our punitive expedition there. No guerrilla leaders or wireless equipment were captured. However, I don't remember how many there were but we did capture some guerrillas who surrendered.

Q On that expedition did you capture the guerrilla governor of Guimaras Island?

A He surrendered.

Q Do you know how many guerrillas, approximately, were captured on that expedition?

A I'm not sure but it may have been about two or three hundred.

Q Did you capture any arms and ammunition at that time from them?

A Yes.

Q Was a battle report sent in to General Kono's headquarters?

A I remember sending it.

Q In the beginning of September 1943 was there an operation order issued by General Kono's headquarters to capture the guerrilla leader Peralta?

A Yes.

Q Will you tell where that was, where the expedition went from and to and what happened.

A We left Iloilo, passed through Calinog and Passi, and went to Ajuy. Immediately after that we conducted punitive expeditions in the vicinity of Sara.

Q Did yourIntelligence report to you there was a secret wireless being operated by them at that time? By "them" I mean the guerrillas.

A Yes.

Q During the middle of September 1943 did you receive an operation order from General Kono's headquarters directing the capture of guerrillas and the destruction of a wireless near the city of Sara?

A Yes.

Q Will you tell where that started and ended and what the result was?

A That is the same expedition which I just mentioned, where we left Iloilo, went through Calinog, Ajuy and Sara.

Q Did you personally go on that expedition?

A I went with the unit as far as Ajuy. From there I came back to Iloilo for the unit commander meeting.

Q Who took over your command when you returned to the company commanders' meeting at Iloilo?

A Captain Kengo Watanabe took over.

Q And did you give him any instructions?

A Yes, I instructed him to follow the orders of the Kono group and show him the area designated to us.

Q During the month of October 1943 did you receive an operation order from General Kono's headquarters relating to the capture of certain guerrilla leaders and destruction of wireless in Capiz Province?

A Yes.

Q Will you tell where that operation started and ended and what the result of it was?

A We left Iloilo by ship and I first landed in the Batan area. We carried out our operation in Altavas, Balete, Libacao, and the Aklan Mountain area. After the expedition ended we assembled at Calinog.

Q When you left did you leave from the bank of the Aklan River?

A When I left where?

Q To return back to your headquarters.

A We landed at Batan and went through Altavas, Balete, Libacao, and we carried out our punitive expedition in the vicinity of Aklan Mountain. After that was finished we went back and assembled at Calinog.

Q Was there a battle report sent to General Kono's headquarters regarding that operation?

A I believe I did.

Q Will you state to the best of your recollection what it contained.

A I believe that it was reported that wireless equipment, accessory parts, and ordnance materiel were captured. However, we did not capture the guerrilla leader.

Q Was there a large amount of wireless equipment and ammunition captured on that expedition?

A It was not a large amount. I believe we only captured one wireless equipment. But we captured quite a bit of accessory parts.

Q During the middle of November 1943 did you receive an operation order from General Kono's headquarters directing the capture of such guerrilla leaders and the destruction of certain wireless equipment operating on Tablas Island?

A Yes.

Q Will you tell where that operation began and ended and what the result of it was?

A The punitive expedition I just mentioned ended and we gathered at Calinog. I had to go back to Iloilo again for the

company commanders' meeting, so Captain Watanabe took over. During my absence Captain Watanabe took over and conducted the punitive expedition in the vicinity of the Aklan River in Capiz. I left Iloilo and went to New Washington in Capiz, and from there we left on a boat and landed south of Odiongan, on Tablas Island. From Odiongan we carried out a punitive expedition mainly to the northern part of the island. We captured one medium-sized wireless equipment and some accessories. We did capture some ordnance materiel but I do not remember how much.

Q During the beginning part of December 1943 did you receive an operation report from General Kono's headquarters directing the capture of certain guerrilla leaders and destruction of wireless apparatus still being operated along Iloilo-Capiz boundary?

A Yes.

COLONEL HAMBY: The Commission will take a short recess.

(Short recess.)

COLONEL HAMBY: The Commission is now in session.

LIEUTENANT MC CULLOUGH: Will the interpreter again remind the witness that he is still under oath.

(Discussion ensued between interpreter and witness.)

BY LIEUTENANT MC CULLOUGH:

Q Will you describe the wireless activities of these guerrillas on Panay during 1943 and 1944 that you referred to in your testimony.

A Stating it simply, the enemy wireless activity was very lively. When the wireless equipments were most active

there were sixteen or seventeen stations on Panay Island. The powerful ones were contacting San Francisco and Australia. The smaller ones were contacting various islands in the Visayan Group, and they also contacted guerrilla leaders in Mindanao and Luzon. Since all of the residents were cooperating with them they had a very extensive information network. Our poor equipment could not be compared with their superior ones. During the punitive expeditions we would capture the equipment but the guerrilla leaders always escaped capture. I remember the names of some of the stations: NCL, HV-5, and CAI. There were others but these three are the only ones that I remember right now.

Q A moment ago you spoke of the ruthless character of the Panay guerrillas. What did you particularly refer to?

A For example, the guerrillas would use civilian homes for their defensive position. Consequently, the civilians are drawn into battle. When the guerrillas attack our small security units, they would come attacking, disregarding the fact that there are civilian homes in the vicinity. Many of our soldiers were killed by the guerrillas and the method of their killing was very cruel. The guerrillas would use spears and bolo knives and the bodies would be mutilated and their corpses would be stripped. We also discovered clues that the guerrillas used poison on their spears. This is the cruel manner in which the guerrillas operated.

Q What major difficulty did you experience in your guerrilla operations?

A One of the difficulties was that I had insufficient strength, manpower, in my unit. As I have mentioned before,

when we went on unified expeditions, I wanted to use as many as possible but I could only muster about 300 men. When I went on expeditions I would usually command about 200 to 250 men.

The second difficulty: Compared to the guerrillas, our arms and equipment were very poor. They had Thompsons, many hand grenades, and many carbines. We had single-loading rifles. The greatest difference was in our communications equipment. We only had five wireless sets and they were always having trouble, so only three of them were in use most of the time. When we would go on expeditions we would have to pull out sets that are set up in some of our security areas. Supply of batteries was very poor. Since I took office we only had one or two supplies, and then they would send us low-voltage batteries and we would have much difficulties. When we went into the mountains, the humidity was high. Since the Japanese equipment was not moisture-proof, we had lots of trouble with our equipment and communication was very difficult while on expeditions between the units and also between myself and the general headquarters.

Yesterday, in my testimony, I said that the communications was satisfactory on the Islands. However, when I said that I meant that it was satisfactory by Japanese standards when we were not on expeditions. Compared to the American equipment our equipment was only one-tenth, one-fiftieth, or perhaps one one-hundredth as efficient. After the surrender I saw the American equipments, and I felt very envious. I told the American officer to whom I surrendered that if I had one-tenth of his equipment I would not lose to him.

A third difficulty: Practically all of the residents were cooperating with the guerrillas, so the guerrillas had a much faster means of gathering information. They knew about our activities very rapidly. We had much difficulty because of the fact that the residents were cooperating with them.

The terrain was extremely difficult. There were mountains, rivers, and canyons, and the roads were destroyed. Consequently, we could not make speedy troop movement, and although we did have a few dilapidated automobiles we could not use them on punitive expeditions. On top of that there were no roads on which automobiles could pass.

The supply situation was extremely poor. In transporting food, the soldiers could carry rations for a week or ten days. However, when they are working in the mountains they would have to come out to a large road to get supplies in order to eat.

Next difficulty: We tried to use automobiles for transportation. However, as I have mentioned before, the enemy destroyed bridges and they had much explosives. In transporting troops and rations, automobiles could not be used because of attacks upon them. We tried to bring up troops and rations and supplies but our rear was always being harassed.

Although the guerrillas were armed, when they are attacked and about to lose they always escape and they hide their equipment and arms, and they look like any civilian. We could not tell the civilians and the guerrillas apart, and thereby we had difficulty.

Generally, that was the extent.

Q You have used the word "guerrillas" quite frequently during your testimony. Will you tell whom you include in the designation "guerrillas"?

A My interpretation of the guerrilla is an armed man or unit that obstructs the activities of the Japanese forces.

Q Will you state what the standing order of General Kono's headquarters was relative to the treatment of the civilian population?

A The policy was to treat the good civilians so that no harm would come to them. They were to be treated warmly so that they will cooperate with the Japanese and thereby facilitate the restoration of peace and order.

Q How was this order transmitted to your unit by General Kono's headquarters?

A It was in the address that General Kono made when he first took office. He also gave instructions when he came to Iloilo and he also gave such instructions at the meeting of the unit commanders and in the orders for punitive expeditions.

Q You discussed the unit commanders' meeting on the 22nd or 23rd of September, 1943, in Iloilo City. Will you state what was discussed at that meeting?

A I don't remember too clearly but the various unit commanders were called to this meeting while they were on punitive expeditions. The unit commanders gave reports on the progress of the expeditions to General Kono. General Kono gave instructions on the method of the expeditions and he called our attention to our necessity of treating the

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residents kindly. He also gave instructions on methods of training based on the experience on punitive expeditions. That was the substance of the meeting.

Q Will you state what unit commanders were at that meeting in September 1943?

A I do not remember all of them but there were myself, Lieutenant Colonel Taga, Lieutenant Colonel Kinoshita, and Colonel Yamaguchi. These are the ones that I remember at the present time.

Q Was Colonel Hidemi Watanabe present?

A Yes, of course.

Q Now, in answer to Captain Yard, you stated the ranks of certain Japanese soldiers and officers. Were those the ranks at the time of the alleged atrocities?

A No, some of them were not the ranks at the time. I mentioned the ranks which they hold at the present time.

LIEUTENANT MC CULLOUGH: On behalf of the defense we now offer Exhibit A into evidence and request that you withdraw the original so that an ink copy can be made, so that we can have photostats made for incorporation into the record.

CAPTAIN YARD: The prosecution has no objection, sir.

COLONEL HAMBY: So ordered.

LIEUTENANT MC CULLOUGH: That, sir, concludes the cross-examination by the defense.

CAPTAIN YARD: May the record show that with the conclusion of the questioning of this witness by prosecution this morning he ceased to be a witness for

the prosecution and was adopted as a defense witness; that the testimony which has been elicited from this witness by Lieutenant McCullough has been in the nature of testimony from a defense witness and not testimony obtained from a witness in the ordinary course of cross-examination.

COLONEL HAMBY: So ordered.

LIEUTENANT MC CULLOUGH: That, sir, to a large extent is true. I agree with the prosecution. However, there were parts of that that were pure cross-examination and it is for the Commission, I believe, to determine the weight as to whether or not that is cross-examination or whether it is direct in arriving at their verdict. I believe it is one of the things to be determined by them at the time they make their decision rather than for us to commit ourselves now that certain parts were defensive material, or certain parts of it were breaking down the direct examination by cross; in other words, that is for the Commission itself to determine at the time they arrive at their verdict.

CAPTAIN YARD: I brought this out, sir, for this reason: We have questions which are now in the nature of cross-examination to address to this witness based upon information obtained from the witness by the defense counsel. For the purpose of the record, it would appear to be strange or unusual that we would adopt this type of procedure. It was our understanding that this method which has been used in connection with this witness was followed in order that his testimony would be consolidated more or

less at one place in the proceedings. Is that correct, Lieutenant McCullough?

LIEUTENANT MC CULLOUGH: That's correct.

COLONEL HAMBY: The ruling of the Commission is that at the present time this witness is a defense witness.

Does the prosecution desire to question the witness?

CAPTAIN YARD: Yes, sir, we have quite a bit of cross-examination, or questions, rather, for this witness. It is approximately 11:25 now. Does the Commission desire us to go ahead?

COLONEL HAMBY: The Commission will recess until 1300 hours.

(The Commission thereupon recessed at 1125 hours.)

AFTERNOON SESSION

The Commission convened, pursuant to recess, at 1300, 16 April 1946.

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: May the record show that the following members of the Commission are present: Colonel Hamby, Colonel Goff, Lieutenant Colonel Chase, Captain Ellingson; the accused together with his defense counsel and personal interpreter and members of the prosecution are present.

(Through interpreter) Will you remind the witness that he is still under oath?

(Discussion ensued between interpreter and witness.)

REDIRECT EXAMINATION

BY CAPTAIN YARD: . . .

Q The command of General Kuroda in the Philippines was similar to that of Yamashita and Homma, is that right?

A I don't know of Generals Yamashita and Homma very well so I could not say.

Q They, too, commanded the 14th army, is that not correct?

A General Homma was here before I came so I do not know. I know that Generals Kuroda and Yamashita were commanders of the 14th army.

Q And between General Kono and General Kuroda, there was no intermediate command, is that not right?

A I remember there was a period when Lieutenant General Fukuei was in command between there for a while.

Q General Fukuei was over General Kono when General Kono's troops came under the 102nd Division, is that right?

A When General Fukuei had command of the 102nd Division, General Kono was a brigade commander under him.

Q There was no intermediate command between the 37th Independent Infantry Security Battalion and General Kono, is that not right?

A There was none.

Q You were in charge of the expedition to Batan in October of 1943, is that correct?

A Yes, I was in command.

Q And this was so even though Batan is situated in Capiz Province?

A It was a unified punitive expedition ordered by General Kono. That is the reason I went there.

Q And it was members of your command that went to Baleto, is that right?

A My unit went there. Other units may have gone but I do not know about other units.

Q And it was members of your command that went to Libacao around October of 1943?

A Yes.

Q And it was members of your unit that went to Altavas around October of 1943?

A Yes.

Q And it was members of your unit that went to Banga around October of 1943?

A My unit also went there. To the Altavas and Libacao areas my unit went together with other units.

Q On the Batan expedition, how many guerrillas did you capture?

A I do not remember how many.

Q Did you give an approximation as to the number that you captured?

A I cannot remember.

Q Would you say there were 200 or more or less?

A It would be less.

Q What did you do with these guerrillas which you captured?

A Some were released on the spot and some were brought back to Iloilo. That is how I remember it.

Q Did you capture guerrilla supporters?

A We may have captured some but we released them.

Q Do you recall landing at Batan, Capiz Province?

A Yes.

Q Do you recall directing members of your unit to round up the citizens of Batan?

A I did not give any such order.

Q While you were there did you see the citizens being rounded up and interrogated?

A I have seen investigations being conducted.

Q When you would go out on a punitive expedition, wasn't it the practice to round up all the citizens?

A No, we do not gather up the citizens.

Q Well, it was true that you couldn't distinguish between the guerrillas and the civilians, isn't that so?

A At one glance they could not be distinguished.

Q Well, how were you able to distinguish the guerrillas from the citizens?

A Through investigations when they would confess, or if they had weapons they would be considered as guerrillas.

Q Then it was necessary that you interrogate the citizens in order to find the guerrillas, isn't that so?

A To gather information it was necessary to do such things.

Q Do you know whether anyone was killed in Batan at the time of your expedition?

A I don't know. By "anyone," do you mean Japanese soldier?

Q Anyone that was killed.

A I know that some men of my unit were killed, and in my report I saw that some of the guerrillas were killed during the attack.

COLONEL CHASE (To reporter): Will you read back the answer, please.

(The last answer was read by the reporter.)

Q Did any of your men kill any of the citizens or the civilians of Batan after they had investigated?

A I don't know of any.

Q Did you send Kuwano to Altavas on that expedition?

A I cannot remember that clearly.

Q Did you send Kuwano to Balete?

A That also I do not remember clearly.

Q Do you remember whether or not Kuwano or Otsuka killed anybody on the expedition?

A No.

Q The guerrillas which were brought back to Iloilo, what did you do with them?

A They were those that we investigated and released, and some we placed in concentration camps and trained and educated them; and then some of them we placed in the custody of the provincial governor.

Q Did you ever, or any of your men, execute a guerrilla on Panay Island?

A I don't know.

Q Your men were not authorized to execute anyone without your permission, is that not correct?

A They are not supposed to.

Q Do you know whether your men ever killed anyone on Panay Island other than in combat?

A I do not know.

Q You were being harassed by the guerrillas, is that not true? Withdraw the question.

You were being bothered by the guerrillas, is that not true?

A As I mentioned this morning, the guerrillas were interfering and obstructing in different manners the activities of the Japanese forces.

Q Your principal mission was to subdue the guerrillas, obtain the wireless equipment, is that not so?

A The mission is what I testified this morning.

Q And most of the citizens were aiding the guerrillas. You believed that to be so, didn't you?

A Yes.

Q In view of the guerrilla activity and the assistance of the civilians, you still never tortured or killed any of the guerrillas or the civilians, is that right?

A We did not kill any.

COLONEL CHASE: That wasn't responsive. He didn't say whether he tortured any or not.

Q Did you ever torture or did any of your men ever torture any of the guerrillas or civilians?

A I do not know.

Q How often did you receive operational --

INTERPRETER OGITA: Just a minute.

A (Continuing) I naturally did not do any such thing,

but since I do not receive any reports about that from my subordinates I don't know about them.

Q You led many of the punitive expeditions, didn't you?

A Yes.

Q And your command would only consist of two-or three-hundred men, is that not so?

A Yes.

Q And if your men were to commit torture, or murder any person, you would know of that, wouldn't you?

A My men naturally would not commit such an act in front of me. I was following the orders of General Kono and such acts were strictly prohibited. Even if my men did commit such an act without my knowledge, naturally they would not report such a thing to myself.

Q Did you ever hear of your men committing such acts?

A No.

Q Did you ever see anyone executed on Panay Island while you were in command of troops?

A By "anyone," do you mean civilians on Panay Island?

Q Civilians, guerrillas, or soldiers.

A No.

Q Did you hear that seventeen Americans had been killed at Camp Hopevale by members of your command?

A No.

Q Did Kuwano ever tell you that he had killed civilians?

A No.

Q Did Noriyuki Otsuka ever tell you that he had killed civilians?

A No.

Q Did Dr. Caran ever tell you that civilians were being killed by your troops?

A He had never said that they were being killed.

Q Did you ever hear any complaints from anyone as to the manner in which the Japanese were treating the civilians in Panay Island?

A Since I have no opportunity to come in contact with the general public, I have never heard of any such complaints.

Q But as battalion commander, were not complaints addressed to you as far as members of your command were concerned?

A I did not receive any such complaints but I did receive reports that Captain Kengo Watanabe was very severe in dealing with his own men.

Q Did you not hear that thousands of Filipino civilians had been killed by Japanese troops on Panay Island?

A I did not hear such a thing.

Q Then on your punitive expeditions you always treated the civilians, guerrilla suspects, and guerrillas with kindness, is that correct?

A I have issued such instructions to my men and I have followed this myself.

Q During the Kono command about how many operational orders did you receive from the Kono headquarters?

A I cannot remember very clearly but orders for punitive expeditions I received about ten times.

Q That is from General Kono's headquarters?

A Yes.

Q And following each punitive expedition you filed a battle report with General Kono's headquarters, is that right?

A Yes.

Q And in that battle report you reported what had happened on the punitive expedition, is that right?

A Yes.

Q Therefore, you did have liaison with General Kono's headquarters?

CAPTAIN YARD: Just a moment. Have the interpreters got all the witness' testimony thus far?

INTERPRETER USHIJIMA: He is just repeating.

CAPTAIN YARD: All right.

A There are times when we had liaison with Kono headquarters, and some times that we did not have good liaison due to the deficiency of wireless facilities. Sometimes we would make the report quite a while after the expedition was over. In these reports we would include the number of wireless equipment captured and the number of arms and ammunition captured, and the estimate of the enemy's losses and our own losses; also, the report on the terrain features and the area. This is what we generally reported.

Q Did you include as the enemy those civilians who were cooperating with the guerrillas?

A Yes, they would be included. Also, while in combat some civilians may be shot but I have not heard much about them.

Q Did you ever see any civilians shot?

A I do not go to the scene of battle very often so I did not see any.

Q You have stated that the Kono policy was to treat good civilians so that no harm would come to them. What about the bad civilians?

A What do you mean by "bad civilians"?

Q You used the words "good civilians." I take it you would know the m[illegible]of the words "bad civilians."

A To those other civilians a lecture would be given and they would be released.

Q And that treatment would be given even though you knew they were actively helping the guerrillas, is that right?

A Yes.

Q How many guerrillas altogether would you say were captured during your command?

A I cannot say the number at the present time because there are many of my smaller units which were dispatched that captured guerrillas and released them on the spot; so I cannot make an estimation.

Q What do you mean, "They were captured on the spot"?

A I mean that civilians would be detained and they would be asked questions as to the location of the guerrillas. The good civilians would be released, or some of them would act as guides and when they are released we pay them. That is how the good civilians were treated. At times civilians who were cooperating formerly with the guerrillas would come out to greet us. Even though we know that they were former guerrilla aiders, we would release them after giving them a lecture.

Q How many unit-commander meetings did you attend during the Kono command?

A Three or four times.

Q Was this both in 1943 and 1944?

A I think there was one in August, one in September, and one in November; and I believe there was another one in 1944.

August, September and November is 1943.

Q Then through the meetings and the battle reports you were able to inform Kono of what was happening in your command?

A Yes.

Q And this was throughout 1943?

A In 1943 and 1944, whenever we can meet General Kono I would report to him about my outfit.

Q Had you received instructions on the Rules of Land Warfare?

A I have never especially received instructions concerning Rules of Land Warfare.

Q Then you do not know, according to international law, the proper treatment to be accorded civilians and prisoners of war?

A That is something I have learned when I was young so even today I can remember the general outline of it.

Q When was the last time you had any instruction on the Rules of Land Warfare?

A I do not remember.

Q Was it more than ten years ago?

A It may have been ten years or more ago.

Q Did you have occasion to instruct members of your command on the Rules of Land Warfare?

A I have never instructed them on the subject "Rules of Land Warfare," but I have instructed them on various things which included contents from the Rules of Land Warfare.

Q Was this based on information which you had learned ten or more years ago?

A Yes.

COLONEL HAMBY: The Commission will take a ten-minute recess.

(Short recess.)

COLONEL HAMBY: The Commission is in session.

CAPTAIN YARD: The prosecution has no further questions.

LIEUTENANT MC CULLOUGH: If the Commission please, I have just one or two questions I would like to ask this witness.

COLONEL HAMBY: Proceed.

RECROSS EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Has anyone besides yourself ever been authorized to make reports of the activities of punitive expeditions of your unit to General Kono's headquarters?

A If I go on a punitive expedition, there is no one else besides myself who sends a report.

Q And if you don't go, who would send that report?

A As I have testified this morning, our wireless equipment was very poor. At times there would be no communication between myself in Iloilo and my unit out on the expedition. Therefore, some times my unit would send a report to General Kono's headquarters without the report going through myself. However, usually the report would come to me first and then be forwarded to General Kono.

Q Those reports that went forward without your knowledge, did you later review them or receive copies of them.

A Yes, I saw them, and it was possible for myself to see them.

Q Did you at any time see any report to General Kono's headquarters with regard to the torture or killing of any civilians?

A Never.

LIEUTENANT MC CULLOUGH: That's all, unless the Commission has some questions.

COLONEL HAMBY: Yes, the Commission has a question.

EXAMINATION BY THE COMMISSION

BY COLONEL HAMBY:

Q Was 2d Lieutenant Otsuka a member of your command?

A Yes.

Q Was 1st Lieutenant Fujii a member of your command?

A Yes.

Q What were their offices in your organization?

A They changed, so which period do you mean?

Q September 1943.

A Hajime Fujii was a platoon leader; however, on the punitive expedition the company commander was in a poor physical condition so he may have become a substitute. Otsuka was a member of the propoganda section in the headquarters.

Q Were these two lieutenants responsible to the witness for their actions during September 1943?

A I do not know the meaning of the word "responsibility", but they were my subordinates.

COLONEL HAMBY: No further questions by the Commission.

LIEUTENANT MC CULLOUGH: If the Commission please, I believe this morning there was no specific statement as to whether or not Exhibit A of the defense was received in evidence We understood at that time that it was received. I believe that was the Commission's intention. I am referring to the chart of the chain of commands.

COLONEL HAMBY: I don't believe it has ever been officially received.

LIEUTENANT COLONEL CHASE: Yes, he presented it, with leave to withdraw it.

LIEUTENANT MC CULLOUGH: That's all.

CAPTAIN YARD: That's all.

(Witness excused.)

NICOLAS CAPACILLO

a witness for the prosecution, was duly sworn and testified as follows through Interpreters Villaluz, Genoves and Lagdameo:

DIRECT EXAMINATION

BY LIEUTENANT SHEPHERD:

Q What is your name?

A Nicolas Capacillo.

Q And your age?

A 33.

Q Are you a Filipino?

A Filipino.

Q Where do you live?

A Barrio Balabago, Town of Sara, Iloilo.

LIEUTENANT SHEPHERD: If the Commission please, the testimony of this witness will relate to specifications 7 and 8. I believe that the witness' testimony will actually cover 8 before 7.

Q During the Japanese occupation of Panay Island were you at any time captured by the Japanese?

A I was caught.

Q Will you tell the Commission the approximate date that the Japanese apprehended you?

A It was September 17, 1943, when I was caught by the Japanese at barrio Balabago, Town of Sara.

Q How do you happen to recall the date as being --

INTERPRETER LAGDAMEO: Pardon me, sir. Correction, please. It seems to me that we should change the word "caught" to "captured".

COLONEL HAMBY: So ordered.

Q How do you happen to recall that the actual day in September was the 17th?

A I remember it because that was the day when my parents were killed.

Q Approximately what was the size of the force of Japanese soldiers that captured you?

A Approximately a little less or more, 15 Japanese.

Q Were other civilians in your barrio also captured by the Japanese?

A Yes.

Q What was the size of the Japanese force, including all of the Japanese soldiers you saw in your barrio at that time?

A They are all fifteen, more or less.

Q Did the Japanese force you to act as a guide and take them to barrio Samponongbolo on that date?

A Yes.

Q Would you tell the Commission what you saw the Japanese do at the barrio of Samponongbolo when you arrived there with them?

A Upon arriving at Samponongbolo on that day, the 17th of September, I saw Japanese killing people numbering a little less or more to sixty.

Q Would you give an estimate of the number of Japanese soldiers that you saw doing the killing at the barrio of Samponongbolo at this date?

A I have not counted but there were plenty.

Q Did the group of approximately sixty civilians that you yourself saw killed by the Japanese at this time consist of men, women, and children?

A The civilians were women, men, children, old people, and most of them were Chinese.

Q Did you yourself see these people killed?

A Yes, I saw.

Q How far would you estimate the distance to be from where you were standing to where these people were being killed?

A Four or six meters, more or less.

Q What were the methods used in killing these approximately sixty civilians?

A Sabers and bayonets; also by throwing them to the ground.

Q When you say "throwing them to the ground" do you refer to the killing of the children?

A Yes, I refer to the children.

Q Just how would the Japanese kill these children by throwing them to the ground?

A Holding the children by the feet and swing them to the ground and throw them into the fire.

Q After these people had been killed what did the Japanese do with their bodies?

A They were carried to the house and the house set on fire.

Q Did you later learn the names of any of the Japanese who were present at the scene of this killing?

A Yes, Watanabe.

Q Do you know the rank of Watanabe that you mentioned?

A At first I did not know, but I was told by Kumai it was the colonel.

Q Did Kumai tell you who was in charge of these Japanese soldiers that had done the killing?

A Yes, Watanabe is the leader of those who did the killing.

Q I hand you Prosecution's Exhibit No. 6 and ask you whose picture it is.

A Watanabe.

Q Is this a picture of the man whom Lieutenant Kumai told you was in charge of the Japanese that killed those

sixty people at the barrio Samponongbolo?

A Yes.

Q I hand you Prosecution's Exhibit No. 7 and ask you whose picture that is?

A Kumai.

Q Is this a picture of the Japanese officer who told you that Colonel Watanabe was in charge of this punitive expedition?

A Yes.

Q And this man was present at the scene of the killing himself, is that correct?

A Yes.

Q Did you,during the later course of this expedition, later learn the names of any other of the Japanese officers that were present at the scene of this killing?

A Yes.

Q And what were the names of these other Japanese officers whose names you later learned.

A Toyota and Fujii.

Q I hand you Prosecution's Exhibit No. 8 and ask you whose picture it is?

A Toyota.

Q You saw this man present when these 60 people were killed, is that correct?

A Yes.

Q I hand you Prosecution's Exhibit No. 4 and ask you whose picture it is?

A Fujii.

Q Again this officer was present when these 60 people were killed, is that correct?

A Yes.

Q Did you know the names of any of the people that you saw killed at the barrio Samponongbolo?

A No.

Q To the best of your knowledge, were they given any trials by the Japanese soldiers before they were killed?

A No.

Q After these killings at the barrio Samponongbolo, did you then accompany the Japanese punitive expedition to barrio Maligayligay?

A Yes, they brought me there.

Q At the barrio Maligayligay, did you see the Japanese kill any Filipinos?

A Plenty.

Q How many people would you estimate that you actually saw killed at barrio Maligayligay?

A More or less 80.

Q Were these 80 people that you estimate the number to have been a group consisting of men, women and children?

A Yes.

Q Were any members of your family in that group that you saw killed by the Japanese?

A There none; but in a separate place.

Q Did you see members of your family killed by the Japanese in barrio Maligayligay?

A Yes.

Q Will you tell the Commission the names and the relationships of the members of your family that you saw killed?

A Jose Capacillo, father; Justina Del Castillo, mother; Porfirio Capacillo, brother; Rodrigo Capacillo, brother.

Q How far were you from the members of your family when you saw them being killed by the Japanese?

A About three or four meters.

Q What method did the Japanese use to kill these four members of your family?

A Saber.

Q To the best of your knowledge, were the members of your family given any trial by the Japanese before they were killed?

A No.

Q Do you know the names of any of the Japanese that you saw present when your family was killed?

A Yes, those are the four people whose picture was shown to me.

Q Then the same four men who were at barrio Samponongbolo when the 60 were killed were present in Maligayligay when 80 more people were killed by Fujii, Watanabe, Toyota, and Kunai. Is that correct?

A Yes.

LIEUTENANT SHEPHERD: The defense may cross-examine.

LIEUTENANT MC CULLOUGH: If the Commission please, may we have a short recess. I believe we can shorten our examination considerably on this. It would save time.

COLONEL HAMBY: The Commission will take a short recess.

(Short recess.)

COLONEL HAMBY: The Commission is now in session.

LIEUTENANT MC CULLOUGH: Will the interpreters remind the witness that he is still under oath.

(Discussion ensued between interpreter and witness.)

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Were all of the people that you have testified about being killed, killed either in the barrio Maligayligay or Samponongbolo?

A Yes, Samponongbolo and Maligayligay.

Q Did those both happen on September 17 and 18, 1943?

A Yes.

(Accused rises.)

Q Did you ever see this man I am pointing to now at either of those places on either of those dates?

A No.

LIEUTENANT MC CULLOUGH: That's all.

CAPTAIN YARD: Any questions, sir?

COLONEL HAMBY: There appear to be none.

The witness is excused.

(Witness excused.)

CAPTAIN YARD: Cayetano Narra.

CAYETANO NARRA

a witness for the Prosecution, was duly sworn and testified as follows through interpreters Lagdameo, Villaluz, and Genoves:

DIRECT EXAMINATION

BY LIEUTENANT SHEPHERD:

Q Please state your name.

A Cayetano Narra.

Q Your age?

A 35.

Q Are you a Filipino?

A Yes.

Q And where do you live?

A Gubaton, Ajuy.

Q During the Japanese occupation of Panay Island, were you at any time captured by the Japanese forces?

A Yes.

Q Would you tell the Commission the approximate date that this happened and where you were captured?

A On September 19, 1943, at barrio Gubaton, town of Ajuy.

LIEUTENANT SHEPHERD: If the Commission please, this witness' testimony will relate to Specification 9.

Q After you were captured by the Japanese, what happened next?

A When I was captured on 19 September at 9 o'clock in the morning, in 1943, I was brought by Captain Watanabe to some group of people.

INTERPRETER LAGDAMEO: Correction, please. It was "colonel," not "captain."

THE WITNESS (Through interpreter): When I was brought there, Colonel Watanabe beat me and asked me where the guerrillas were hiding. Then Colonel Watanabe asked me whether I know the people around. Then I pointed to Leonardo Narra, Jose Articona, Julian Pirante, Federico Pirante, and Domingo and Mariano, whom I do not know their family names. They asked Domingo and Mariano where the guerrillas were but they did not answer. Then Colonel Watanabe took the bayonet of the soldiers, gave it to him, and ordered him to stab him at the back. Then Francisco Magalona intervened and asked him to tell only the truth if he is to defend his life. Francisco Magalona told me that I will tell the truth so that he will defend my life.

Q And who was Francisco Magalona?

A Filipino. He was the "P.C.," Philippine Constabulary, working under the Japanese. And then I was told by Francisco Magalona if I wanted to go with him to Batoinsay. Francisco Magalona asked me to go with them to Batoinsay because this Colonel Watanabe ordered Magalona to do so.

Q I hand you Prosecution's Exhibit No. 6 and ask you whose picture it is.

A This is Watanabe, who beat me.

Q You mentioned that Watanabe beat you. Would you tell the Commission about the beating by Colonel Watanabe?

A I was beaten by Colonel Watanabe with an adgaw, a

kind of wood, and ordered his soldier to throw me to the ground.

Q Why did Colonel Watanabe beat you?

A Because he asked me where the officers of the army were and I did not tell him.

Q Did you know?

A No.

Q Were you beaten by anyone else at this time besides Colonel Watanabe.

A No more.

Q I hand you what has been marked for purposes of identification as Prosecution's Exhibit No. 15 and ask you whose picture it is (handed to witness).

A This is mine.

Q And does this picture truly show these scars left on your body as a result of the beating of Colonel Watanabe?

A Yes, because he even kicked me with the shoes with the spikes.

LIEUTENANT SHEPHERD: Would the Commission desire to look at the scars on the body of the witness?

COLONEL HAMBY: The Commission does not.

Q At this same date after you had been beaten by Colonel Watanabe, did you have occasion to witness any killing by the Japanese in the village of barrio Gubaton?

A Yes.

Q How far is barrio Gubaton from Ajuy, Iloilo?

A About two kilometers.

Q Is barrio Gubaton a barrio in the municipality of Ajuy?

A Yes.

Q How many people did you see killed by the Japanese in barrio Gubaton at this time.

A Six.

Q And how far were you standing from these six people when they were killed?

A Two arms' length, or four meters.

Q Do you know the names of any of the Japanese that killed these people?

A Yes, he was Colonel Watanabe.

Q Did Colonel Watanabe kill all six of these people, or how many did he kill?

A Colonel Watanabe killed only four.

Q What method did he use to kill them.

A Those four people were squatting when he beheaded them with his saber.

Q And who killed the other two people?

A Colonel Watanabe gave the bayonet to one of his soldiers and ordered him to stab Domingo at the back and repeated it in his breast. Then Anoy followed.

INTERPRETER LAGDAMEO: Clarification please. Colonel Watanabe gave a bayonet to one of his soldiers and ordered this soldier to stab Ingo, the nickname for Domingo, in the back and at the breast, and then the soldier did the same thing to Anoy, which is the nickname for Mariano.

Q Was one of the four civilians beheaded by Colonel Watanabe a member of your immediate family?

A Yes.

Q What was the relationship?

A My father, my second cousin, and my god-brother.

Q Did you witness any other killings in the barrio Gubaton?

A Yes.

Q Would you tell the Commission about these additional killings?

A Yes.

LIEUTENANT SHEPHERD: Read the previous question and answer.

(The last question and answer were read by the reporter.)

LIEUTENANT SHEPHERD: The question and answer before that.

(The requested question and answer were read.)

INTERPRETER LAGDAMED: If the Commission please, there is some misunderstanding between the witness and the counsel. The witness cannot understand clearly the question. The witness insists that he saw another killing in Gubaton, but he mentions the same person that he has told about before and it does not change. He has been asked whether he saw another killing and he says yes. "Tell what the other killings are?" and he mentions the same persons he told about seeing killed -- the same six persons. He is repeating the six persons. We are trying to clarify to the witness that he must not include the six to the new killings

that he is being asked by the prosecution.

CAPTAIN YARD: Sir, the proper procedure, however, in these matters is for the interpreter to act only as an interpreter, never to use his own initiative so far as what the witness does or doesn't say is concerned; but that he simply relate the question that is asked and repeat the answer that is given or interpreted, and then permit the examiner to straighten out the matter with the witness. Now, there is a great deal of conversation that goes on here that the Commission is not familiar with and does not know what is happening.

INTERPRETER LAGDAMEO: That is what the interpreters are doing. We are trying to interpret clearly what the prosecution wants. But the question is this: we address to the witness some question and we want to have a clear answer from the witness, and before the witness can answer it seems to me that the prosecution is already protesting that we are not interpreting all right. We are trying to be more faithful to our work and that is why we are doing so much talking -- because we are trying to get it right. The witness is illiterate and perhaps he does not understand what is requested. We are trying to have from the witness his correct answer.

COLONEL HAMBY: That is correct. The interpreter also has the duty to make certain that the witness understands the question. Therefore, the interpreter sometimes has to rephrase the English question into words and phrases that are usual and understandable in the dialect.

CAPTAIN YARD: Yes sir. However, we certainly do not want the interpreters, the chief interpreter or anyone

in this group, presuming to interject that their opinion of what the meaning of our question is into the questions that are asked the witness. We would ask them if they are at a loss as to the meaning of the question that they will direct it to the examiner and we will be very glad to straighten it out.

COLONEL HAMBY: Go ahead. Let us proceed.

LIEUTENANT SHEPHERD: Read the last question back, please.

(The last question was read by the reporter.)

A The Japanese brought with them two men, namely, Aurelio Artacho and Lucas Doctolero.

Q What did the Japanese do with these two Filipinos?

A Lucas Doctolero was asked by the Japanese to lay on the ground--ordered by the Japanese to lay on the ground, remove the strings that are tied on his hands behind his back, then ordered him to stretch both arms on each side.

Q Then what happened?

A While in that position a nail was driven through on the wrist of both hands, through the wrist to the ground. The length of the nail was about six inches.

Q Continue.

A Remaining in that position, they twisted his head on one side, face downwards, and nailed him with a nail through his head, hammering it with a hammer.

Q Did this result in the death of Lucas Doctolero?

A Yes.

Q And how far were you from this spot where Doctolero was crucified?

A About four meters.

Q What happened to Aurelio Artacho?

A After the death of Lucas Doctolero they removed Aurelio Artacho and brought him near the house. While under the house they asked Aurelio Artacho where the Army people were; then Aurelio Artacho answered, "I did not know where they are." After the answer of Aurelio Artacho that he did not know where the Army people were, Watanabe removed his saber and struck on the head Aurelio Artacho, thereby causing his fall to the ground. Then they took hold of his feet and threw him under the house and set the house afire.

Q How far were you standing from where Artacho was killed?

A Also about four meters.

Q Did you see any of the people that you have mentioned as being killed in the barrio of Gubaton given any trial by the Japanese before they were executed?

A Yes.

Q What kind of a trial was given to anyone and who was tried by the Japanese?

A Colonel Watanabe inquired from Domingo where the officers of the Army were.

Q And this questioning by Colonel Watanabe of where the guerrillas were -- that is what you call the trial, is that correct?

A Yes.

Q Did the Japanese force you to accompany them on their punitive expedition from barrio Gubaton to barrio Batoinsay?

A Yes.

Q And in barrio Batoinsay did you witness the Japanese killing any Filipinos?

A Yes, I saw when Neneng Navarro was killed.

Q And was Neneng Navarro a woman?

A Yes, a woman.

Q And how was she killed?

A Neneng Navarro was asked by Colonel Watanabe why she had a picture of a military man, and Neneng Navarro answered, "This is a picture of my husband."

Q Did you hear Colonel Watanabe ask this question of Neneng Navarro?

A Yes, because Francisco Magalona told me so.

Q Well, then Francisco Magalona, Philippine P.C. member who accompanied the Japanese, told you that that was what Colonel Watanabe had asked Neneng Navarro; is that correct?

A Yes.

Q And what happened to Neneng Navarro?

A After that question Neneng Navarro told Colonel Watanabe that her husband is dead; but, on the other hand, Colonel Watanabe believes that he is an officer of the Army.

Q Did you see Neneng Navarro killed?

A Yes.

Q Who killed her?

A Colonel Watanabe.

Q Was it Colonel Watanabe or some of the Japanese soldiers with him?

A It was Colonel Watanabe who hacked the head of Neneng Navarro.

Q Was it Colonel Watanabe or some of the Japanese soldiers with him who killed Neneng Navarro?

A Yes, because I saw.

Q Who did you see kill her, the Colonel or some of the soldiers with him, which one?

A It was Colonel Watanabe who give the saber to one of the soldiers who hacked the head of Neneng Navarro.

LIEUTENANT SHEPHERD: Read the last answer.

(The last answer was read by the reporter.)

LIEUTENANT SHEPHERD: All right.

Q And did you later in the day and in the same barrio, Batoinsay, see other persons killed by the Japanese?

A No more other than Neneng Navarro.

Q The next day did you witness killings in Batoinsay?

A Yes, at five o'clock, Sunday, midnight.

LIEUTENANT SHEPHERD: Well, if that's what he says.

Q Will you describe to the Commission the killings that you saw take place at this time?

A On Saturday night, about 9:00 P.M., Colonel Watanabe abused three women.

Q All right, describe this to the Commission.

COLONEL GOFF: What were the last three words?

LIEUTENANT SHEPHERD: "Abused three women."

THE WITNESS: Colonel Watanabe inserted his two fingers inside Milagros' genital organ. After doing this act to Milagros,he did the same thing to Magdalena.

Q These are two of the three girls that you mentioned, is that correct?

A Yes.

Q Did you see this yourself?

A Yes, because we were together that night in front of the fire.

Q Continue.

A After doing the same thing to Magdalena and to the third girl, he went back to Milagros. He went back to Milagros and after inserting again his two fingers again to Milagros' genital organs, what he did is to wipe his fingers on my hair and then after that he left the place and went up the house of Neneng Navarro.

Q Then what happened?

A After that he slept because it was still evening, while us prisoners sat where we were.

Q And how many prisoners were there with you including yourself?

A Including myself we were twelve.

Q Did you leave the barrio the next morning?

A That morning I do not leave Batoinsay.

Q What happened that morning then?

A About 5:00 A.M. JuanKiki was brought up. Colonel Watanabe, with two of his soldiers, also went up.

Q By "was brought up," do you mean went into the house of Navarro?

A Yes, he was brought to the house of Neneng Navarro because that house where Watanabe slept the night previous was the house of Mariano Navarro.

Q Continue.

A When Colonel Watanabe and two of his soldiers were up in the house he began questioning about the whereabouts of the officers of the army.

Q Do you speak Japanese?

A No.

Q Then how do you know what Colonel Watanabe was asking Juan Kiki?

A Because it was Francisco Magalona who told me about the questions.

Q Could you see Colonel Watanabe talking to Juan Kiki?

A Yes, because the house where we went had no walls.

Q Did you see any killing of Filipino civilians in this house?

A Yes.

Q How many people were killed in that house?

A Eleven.

Q Was Crescencio Tupaz one of the persons killed?

A Yes.

Q Of the eleven people killed, how many were men and how many were women?

A Three women and eight men.

COLONEL HAMBY: The Commission will take a short recess. (Short recess.)

COLONEL HAMBY: The Commission is now in session.

LIEUTENANT SHEPHERD: (To interpreter): Will you remind the witness that he is still under oath.

(Discussion ensued between interpreter and witness.)

LIEUTENANT SHEPHERD: Will the reporter read the last question and answer.

(The last question and answer were read by the reporter.)

BY LIEUTENANT SHEPHERD:

Q Were these three women that had been abused by Colonel Watanabe killed?

A Yes.

Q How many meters were you from the place, the house, where these eleven people were killed?

A About four meters.

Q To the best of your knowledge, were any of these persons given a trial by the Japanese before they were killed?

A Questions were asked of them.

Q But they were only questioned before they were killed, is that correct?

A Yes.

Q From barrio Batoinsay did you then accompany the Japanese to barrio Gaun?

A Yes.

Q Did you witness any other killings by the Japanese in barrio Gaun?

A Yes, in the afternoon, about five p. m.

Q How many people were killed there by the Japanese that you saw?

A Only one.

Q How was this one person killed?

A He was ordered by Colonel Watanabe to squat on the ground and questioned as to where the army people were.

Q Do you know the name of the Japanese who killed this person?

A It was Colonel Watanabe.

Q Was this a man or a woman?

A The one killed was a man; his name was Elias.

Q How far were you standing from the place where Elias was killed?

A About five arms' length.

Q Were you set free by the Japanese after this?

A No, I was released on the following morning.

Q Do you know the names of any of the Japanese that were on this expedition except Colonel Watanabe?

A Yes, plenty.

Q What are the names of these other Japanese whom you know?

A I don't know their names; only I saw many Japanese.

Q How do you happen to know the name of Colonel Watanabe?

A Francisco Magalona informed me about his name.

Q You have mentioned specifically many dates and many different hours that different events took place. Are you sure of these as being exactly correct, or are you giving them just to the best of your recollection?

A These are all the truths because I saw them all with my own eyes, and if I did not have any luck I also was killed by Colonel Watanabe.

LIEUTENANT SHEPHERD: At this time prosecution offers into evidence its Exhibit 15.

LIEUTENANT MC CULLOUGH: No objections.

COLONEL HAMBY: It will be admitted.

(Prosecution Exhibit 15 was received in evidence.)

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Did the first killing which took place happen in Gubaton on September 19, 1943?

A Yes.

Q How many people were killed that day?

A Six.

Q Was it the next day, then, that you went to Batoinsay, barrio Batoinsay?

A Yes, on Sunday.

Q Was that September 20, 1943?

A Yes, on the morning of Sunday, when those people were killed.

Q Was that the following day or September 20, 1943?

A It was on September 20, 1943, in the morning, when eleven persons were killed by Colonel Watanabe.

Q What barrio was that in?

A In Batoinsay, in the house of Neneng Navarro and Mariano Navarro.

Q How long did you stay in that barrio?

A Only that time when Colonel Watanabe brought me there.

Q What day was that?

A Sunday.

Q Was that Sunday, September 20, 1943?

A It was Sunday.

Q When did you go to the barrio Gaun?

A Sunday afternoon.

Q When did you leave the barrio Gaun?

A Tuesday, about five in the morning.

Q Did all of these killings, then, that you have testified about take place between September 19 and September 22, 1943?

A Yes.

Q Did all of them take place in the three barrios, namely, Gubaton, Batoinsay, and Gaun?

A Yes.

Q Are those barrios all in or near the city of Ajuy?

A Yes.

Q Did you ever hear of Colonel Peralta?

A No.

Q Did you ever hear of the 6th Guerrilla Army that was stationed near Ajuy at that time?

A I did not hear.

Q Have you ever heard of the 61st Division of guerrillas under Peralta that was stationed near Ajuy at that time?

A No.

Q Were there any combat operations taking place between the guerrillas and the Japanese Army near that barrio about that time?

A No.

Q Did you ever know of any combat operations taking place any time in 1943 between the guerrillas and the Japanese Army?

A No.

Q Have you ever heard of any other Watanabe up there besides the Colonel Watanabe that you have referred to in your testimony?

A I only know one Colonel Watanabe.

Q Have you ever heard of a Captain Kengo Watanabe?

A No.

Q Have you ever heard of a Major Kengo Watanabe?

A No.

Q Do you know the name of any other Japanese soldier who was on the island of Panay at any time during the Japanese occupation besides Colonel Watanabe?

A I don't know.

Q Have you ever seen this man in Ajuy or any of the surrounding barrios at any time during the Japanese occupation?

A I have not seen him.

LIEUTENANT MC CULLOUGH: Let the record show that General Kono is the one that I pointed to and the one that is standing up. That's all.

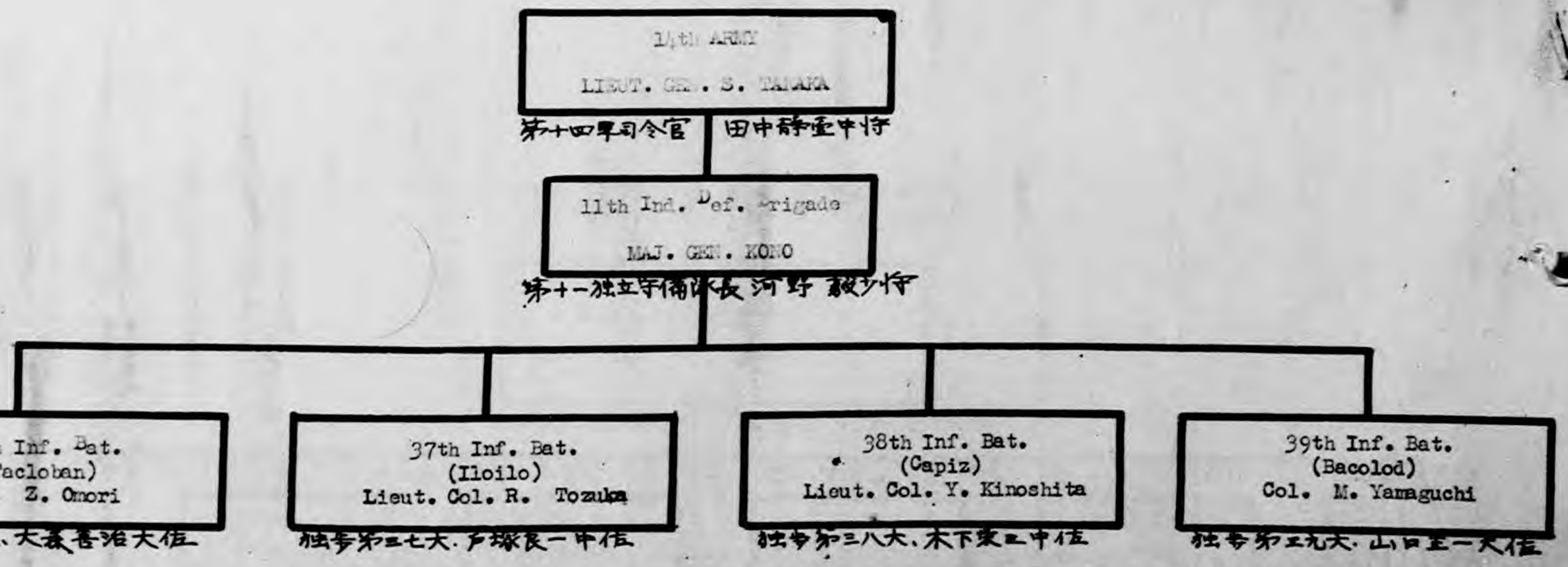
LIEUTENANT SHEPHERD: Has the Commission any questions to ask the witness?

COLONEL HAMBY: There appear to be none.

(Witness excused.)

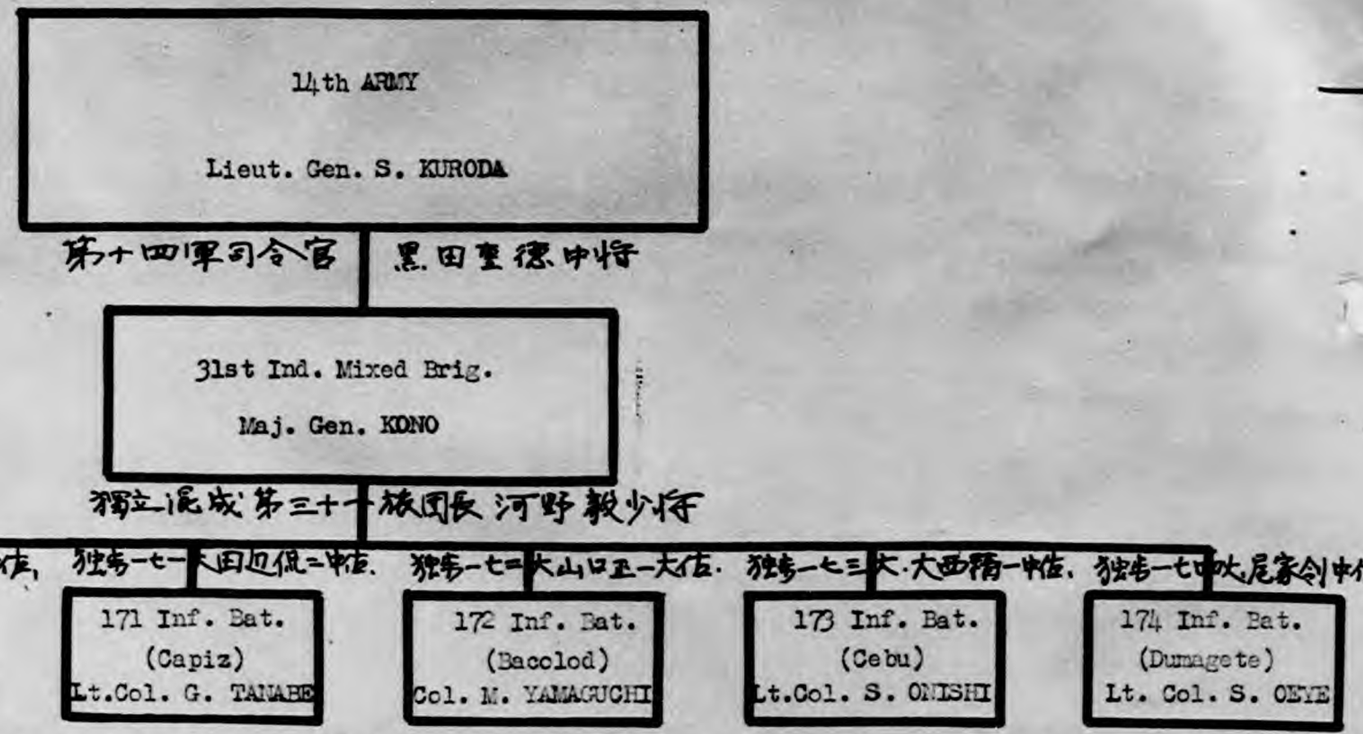
COLONEL HAMBY: The Commission will adjourn until 0830 tomorrow morning.

(The Commission thereupon adjourned at 1630 hours, 16 April 1946.)



July 1943	Proceeded to Iloilo, accompanied by Staff Officer Lieut. Col. Hidemi WATANABE, to supervise combat operations against PANAY guerrillas in accordance with Army Orders. Object of operation:- Capture of guerrilla leaders, uncovering enemy wireless equipment.
Oct. 1943	Returned to Cebu.
22 Nov. 1943	COMMANDER , 31st Independent Mixed Brigade. Chain of Command and Units under Command.

DEFENSE EXH. "A"
USA vs. Takeshi Kono
16 April 1946


14th ARMY
Lieut. Gen. S. KURODA
第十四軍司令官 黒田重徳中将
31st Ind. Mixed Brig.
Maj. Gen. KONO
独立混成第三十一旅団長 河野毅少将
169 Inf. Bat. (Tacloban) Maj. S.NISHIMURA
170 Inf. Bat. (Iloilo) Lt. Col. R.TOZUKA
171 Inf. Bat. (Capiz) Lt.Col. G. TANABE
172 Inf. Bat. (Bacolod) Col. M. YAMAGUCHI
173 Inf. Bat. (Cebu) Lt.Col. S. ONISHI
174 Inf. Bat. (Dumagete) Lt. Col. S. OEYE

Apr. 1944	Received Army order to conduct coordinated operations against guerrillas in Panay and Negros. Proceeded with Staff Officer Lieut. Col. Hidemi WATANABE, about middle of April, first to Bacolod, remaining there for about 10 days, and then to Iloilo, remaining there until latter part of May.
May 1944	Returned to Cebu.
10 July 1944	As result of reorganization, appointed Commander 77th Infantry Brigade.

Chain of Command and Units under Command
(As of about end of ~~August~~ June, 1944)

CHAIN OF COMMAND AND UNITS UNDER COMMAND

14th AREA ARMY

GEN. YAMASHITA

第十四軍司令官　山下奉文大将

35th ARMY CORPS

LIEUT. GEN. SUZUKI

第三十五軍司令官　鈴木宗作中将

KONO HEIDAN

MAJ. GEN. KONO

河野兵団長　河野 毅少将

歩兵第七七旅団長河野 毅少将

77th IND. BRIG.

170)
172) Ind. Inf. Bn.
354)

Mid-Dec. 1944 - end March 1945

歩兵第七八旅団長万城目武雄少将

78th IND. BRIG.

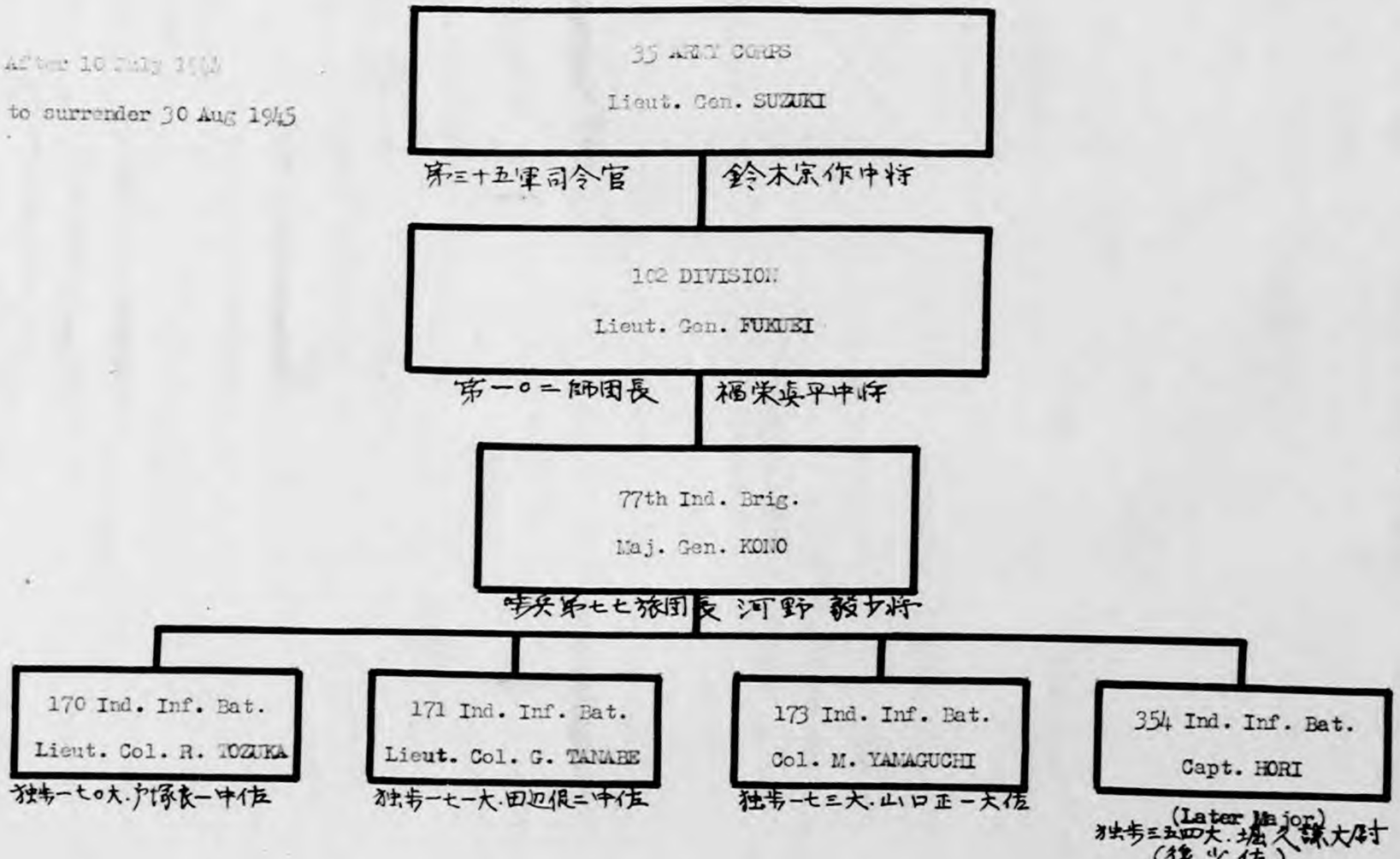
MAJ. GEN. MANJOME

Except 169 Ind. Inf. Battalion

With reference to defense of Negros took orders from LIEUT. GEN. TERADA, Commander of Second Air Division.

After 10 July 1944

to surrender 30 Aug 1945



Prosecution's Exhibit #15
U.S.A. vs Takeshi KONO
16 April 1946

(2055)

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Armed Forces
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
vs	)	
	)	PUBLIC TRIAL
TAKESHI KONO	)	
	)	

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VOLUME III

PAGES 222 TO 321

MANILA, P. I.

DATE: 17 April 1946

COPY NO.: 3

CERTIFICATION

This certifies that this volume is a part of the proceedings of the Military Commission appointed by Paragraph 21, Special Orders No. 85, Headquarters, United States Army Forces, Western Pacific, dated 12 April 1946, in the trial of the case of the United States of America v. Takeshi Kono.

Dated 7 May 1946

WILLIAM R. HAMBY
Colonel, CAV
President of Commission

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

UNITED STATES OF AMERICA

vs

TAKESHI KONO

PUBLIC TRIAL

Court No. 2-B
High Commissioner's Residence
Manila, P. I.
17 April 1946

Met, pursuant to adjournment, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL WILLIAM R. HAMBY, CAV, President and Law Member
COLONEL JOHN L. GOFF, CAC
COLONEL JOSEPH H. WARREN, INF
LIEUTENANT COLONEL JOHN A. CHASE, (CMP) FA
CAPTAIN JACK ELLINGSON, CMP

APPEARANCES:

FOR THE PROSECUTION:

(AS PREVIOUSLY NOTED.)

FOR THE DEFENSE:

(AS PREVIOUSLY NOTED.)

INTERPRETERS FOR THE COMMISSION:

(AS PREVIOUSLY NOTED.)

REPORTERS FOR THE COMMISSION:

ARNOLD COHEN
WILLIAM COHEN

I N D E X

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Filomeno Cirineo	248	254			
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P R O C E E D I N G S

The Commission convened, pursuant to adjournment, at 0830 hours, 17 April 1946, at Court No. 2-B, High Commissioner's Residence, Manila, P. I.

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: Sir, may the record show that the following members of the Commission are present: Colonel Hamby, Colonel Goff, Colonel Warren, Lieutenant Colonel Chase, Captain Ellingson; that the accused together with his defense counsel and personal interpreter and the members of the prosecution are present.

Inasmuch as Colonel Warren was not present at the time of the swearing of the Commission, we ask at this time that Colonel Warren be sworn.

(Colonel Joseph H. Warren was sworn as a member of the Commission.)

Sir, although there is no specific provision in the Letter Order of 5 December 1945 covering a situation where a member of the Commission who has been detailed but unable to attend a portion of the proceedings should have the substance of the proceedings made known to him, nevertheless it does provide in the Letter Order of 5 December that if a vacancy occurs after trial has begun the substance of all proceedings had and evidence taken in that case shall be made known to the new member or alternate in open court before the trial proceeds. In keeping with the spirit of the Letter Order of 5 December 1945, and based upon precedent that has been established in other cases tried before war crimes commissions in Manila, it is deemed advisable to

direct certain questions to a member who appears as Colonel Warren has in the proceedings. Therefore, permission is requested to direct certain questions to Colonel Warren.

COLONEL HAMBY: You may proceed.

CAPTAIN YARD: Sir, have you familiarized yourself with the substance of the proceedings in the case of the United States of America v. Takeshi Kono thus far?

COLONEL WARREN: I have.

CAPTAIN YARD: If the Commission please, we will briefly summarize for the Colonel the substance of proceedings as they have occurred in this case since the time of arraignment.

COLONEL HAMBY: Proceed.

CAPTAIN YARD: On 15 April 1946 the case of the United States of America v. Takeshi Kono was begun at Courtroom No. 2-B, High Commissioner's Residence, Manila. The accused was present with his regularly appointed defense counsel and a personal interpreter which had been selected for him. Members of the prosecution were present; four members of the Commission were present.

It was agreed between the accused, his counsel, and the prosecution that unless specifically requested the proceedings would not be translated into Japanese inasmuch as the accused had been furnished with a personal interpreter.

Prosecution offered into evidence as its Exhibit No. 1 the Letter Order of 5 December, Regulations Governing the Trials of Accused War Criminals, and the Special Orders No. 85, Headquarters, United States Army Forces, Western Pacific, dated 12 April 1946, setting up this Commission.

Members of the Commission, reporters, interpreters, and prosecution were sworn.

The charge and specifications had been served upon the accused by a member of the prosecution staff on 10 April 1946, together with a true and complete translation into Japanese. At the time of the arraignment the charge and specifications were read in open court to the accused. At that time, likewise, the provisions of the Letter Order relating to the rights of the accused were read and explained to him, at which time he indicated that he desired to be represented by the regularly appointed defense counsel.

At the time of the arraignment defense filed with the Commission a certain motion relative to bills of particulars and, more specifically, allegations, and also concerning a motion to strike. At the same time prosecution filed its answer. Inasmuch as the motion and answer had been delivered to members of the Commission prior to the time of arraignment, argument was not had at the arraignment. After a recess the motion of the accused was overruled.

Trial was begun immediately after arraignment, prosecution calling as its first witness Lieutenant Colonel Ryoichi Tozuka, who was commanding officer of the 37th Independent Infantry Security Battalion, with headquarters at Iloilo, Iloilo, Panay. This witness developed the chain of command and identified certain Japanese officers and enlisted men as having been in his command. Photographs of these officers and enlisted men were offered and received into evidence, they being Exhibits 3 through 14, inclusive. I might say that Exhibit No. 1 was the Letter Order of

5 December 1945. Exhibit No. 2 was the sketch map of Panay Island.

At the conclusion of the direct examination of this witness counsel for the accused requested that the cross-examination of the witness be postponed until 16 April 1946, in order that counsel would have an opportunity to prepare its cross-examination. Leave was granted to follow this procedure by the Commission.

Thereupon prosecution called as its next witness Estrella Azuelo, whose testimony related to Specification No. 1, concerning the killing of about fourteen unarmed noncombatant Filipino civilians at or near barrio Ticongcahoy, Sara, Iloilo, Philippines.

Next witness called by prosecution was Severo Posadas whose testimony related to Specifications 2 to 5, inclusive, and concerned alleged atrocities as follows:

The killing of about 42 unarmed noncombatant Filipino civilians at or near the barrio Progreso, Ajuy, Iloilo. The killing of one civilian at or near Sara, Iloilo. The killing of about 12 civilians at or near barrio Samponongbolo, Sara, Iloilo. The killing of 60 unarmed civilians at or near barrio Ticongcahoy, Sara, Iloilo.

That concluded the proceedings for 15 April 1946.

16 April the witness Ryoichi Tozuka was recalled. He was examined at length by defense and identified Defense's Exhibit A. At the conclusion of his testimony it was stated into the record that the defense had adopted this witness as his own. This was concurred in by defense with the exception of one or two questions which the defense had asked the witness and which questions were in the line cross-examination. Thereafter, prosecution cross-examined this witness. We might mention to the Colonel that although the proceedings were unusual -- that is, calling the witness first as a prosecution's witness, having his testimony then adopted by defense, and then having the same witness cross-examined by the prosecution -- it was done in order that his testimony would be consolidated at one place in the proceedings and it would be far simpler to analyze his testimony because of that.

I should have mentioned that on 15 April Federico Arao also testified. His testimony related to Specification No. 6 and concerned the killing of two unarmed civilians at the barrio Agbobolo, Ajuy, Iloilo.

On 16 April, after the testimony of Ryoichi Tozuka, prosecution called Nicolas Capacillo, whose testimony concerned Specifications numbers 7 and 8 and related to the killing of about 84 unarmed non-combatant civilians at or near barrio Maligayligay, Sara, Iloilo, and the killing of about 60 unarmed civilians at or near the barrio Samponongbolo, Sara, Iloilo.

Prosecution's next witness was Cayetano Narra whose testimony related to the allegations set forth in Specification No. 9 and concerns the killing of about 22 unarmed civilians at or near Ajuy, Iloilo.

That, sir, is the substance of the proceedings to this point in this trial. Does the Colonel have any question he would like to direct to the prosecution or defense?

COLONEL WARREN: I do not.

CAPTAIN YARD: May we proceed, sir?

COLONEL HAMBY: Proceed, please.

CAPTAIN YARD: Prosecution calls as its next witness, Augustin Dasas.

AUGUSTIN DASAS

a witness for the prosecution, was duly sworn and testified as follows through interpreters Genoves, Villaluz, and Lagdameo:

LIEUTENANT MURPHY: Sir, this witness will testify as to a part of the alleged atrocities set out in Specification No. 10.

DIRECT EXAMINATION

BY LIEUTENANT MURPHY:

Q Will you please state your name?

A Augustin Dasas.

Q How old are you?

A Thirty-seven years.

Q What is your present address, Mr. Dasas?

A Barrio San Jose, Sara, Iloilo.

Q Is that on Panay Island?

A Yes, Panay.

Q What is your occupation?

A Farmer.

Q During the Japanese occupation of Panay Island, were you ever apprehended by members of the Imperial Japanese Army?

A No, I was not apprehended.

Q Were you ever caught by members of the Imperial Japanese Army?

A Yes, I was caught. That was the time when I was wounded.

Q What was the approximate date of your capture?

A It was Sunday.

Q What was the date, the approximate date, that is, day and month?

A Second of September, 1943.

LIEUTENANT MURPHY: May I have the answer back?

(The last answer was read by the reporter.)

Q How many Japanese were in the group that captured you?

A Approximately 100 Japanese.

Q Where did the Japanese take you?

A From the house I was brought to the place where they used to kill people.

Q Did that appear to be an area where the Japanese slept?

A Yes.

Q What barrio was that near?

A It was near barrio Kagkag.

INTERPRETER LAGDAMEO: The witness made a clarification of his answer to that question about the barrio. It is barrio Kagkag, which is near barrio Gibato where they killed people.

LIEUTENANT MURPHY: I believe that the mimeographed specifications show that as C-I-B-A-T-O. It should read G-I-B-A-T-O.

COLONEL HAMBY: Have the record corrected accordingly.

Q Out of the group of approximately a hundred Japanese, did you recognize any Japanese?

A Yes.

Q How many Japanese did you recognize?

A Only one.

Q What was the name of that Japanese?

A Toyota.

Q I show you a photograph which has been marked as Prosecution's Exhibit No. 8 and ask you to identify the person shown thereon.

A Toyota.

Q When you arrived at the bivouac area of the Japanese, did you see any dead Filipinos?

A Yes.

Q How many bodies did you see there?

A Four.

Q What happened to you when you arrived at this area?

A When I arrived there I saw four corpses and I saw two others being killed. I was the seventh.

LIEUTENANT MURPHY: Will you read the answer back.

(The last answer was read by the reporter.)

Q Did you recognize the Japanese who was killing the two persons when you arrived there?

A Yes.

Q Who was that Japanese?

A Yes, it was Toyota.

Q Is that the Toyota represented by Prosecution's Exhibit No. 8 (handed to witness)?

A Yes, he is the one.

LIEUTENANT MURPHY: May the record show that the witness was shown Prosecution's Exhibit No. 8.

Q Who made the attempt on your life?

A It was Toyota.

Q Will you tell in your own words how the attempt was made on your life.

A My hands were tied behind my back, and then I was ordered to kneel. While I was kneeling they hold my head and push it down. While in that position I tried to lift up my head and then he pushed it down again. And then he struck my head with a saber. When my head was hit I remained in that stooping position without moving. While in that position on the ground he hacked my neck twice, first on the side, then on the back.

Q Who was handling the sword that caused the wounds on your neck and body?

A Yes, I am sure it was Toyota.

Q You are sure it was Toyota?

A Toyota.

Q I show you a photograph which has been marked for the purpose of identification as Prosecution's Exhibit No. 16

and ask you if this is a picture of yourself showing the scars on your neck.

A Yes, this is mine.

Q Does this photograph show the scars or a part of the scars which you received when Toyota attempted to kill you?

A Yes.

Q Will you show your scars to the members of the Commission?

A (Witness does so.)

LIEUTENANT MURPHY: Will the record show that the witness exhibits scars to Commission.

Subject to any objection which the defense may have, I offer into evidence what has been marked as Prosecution's Exhibit No. 16 for the purpose of identification, and ask that it be admitted into evidence as Prosecution's Exhibit No. 16.

LIEUTENANT MC CULLOUGH: No objections.

COLONEL HAMBY: It will be received in evidence.

(Prosecution's Exhibit No. 16 was received in evidence.)

Q How did you know that it was Toyota who killed these people and attempted to kill you?

A Because I was informed by the other civilians that it was Toyota who did the killing in their barrio. Besides I know his face.

Q After the attack did you lose consciousness?

A Yes.

Q After you regained consciousness did you see the Japanese kill anyone?

A No more.

Q Of the seven victims that you have testified to seeing, did you recognize any of them?

A Yes.

Q Will you give the names of those whom you recognized?

A Jose Romoaldo, Mariano Romoaldo.

Q What was the age of Mariano Romoaldo?

A I estimated that that old man was about 80 years.

Q How old?

A 80.

Q Did you recognize any of the victims?

A A woman, Encarnacion.

Q Did you recognize any other women who have been killed?

A No more.

Q Was this woman Encarnacion the wife of Jose Romoaldo?

A Yes, she is the wife of Jose Romoaldo.

Q Did you notice anything as to her condition?

A You mean circumstances of her death?

Q Was she pregnant at the time?

A Yes, she was pregnant.

Q After you regained consciousness where did you go?

A I went home to my house.

Q Were you treated by a doctor?

A Yes, I was treated by a doctor.

Q During the time that you were in the house recovering from your wounds did your wife inform you of the fact that more deaths had occurred in Gibato on the day of your injury?

A It was not my wife who told me, but it was me personally who heard from the other civilians that about 48 more civilians were killed; however, I did not see their killing myself.

LIEUTENANT MURPHY: You may ask.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Did all of the killings or cuttings with the bayonet or sword take place in the barrio of Gibato on September 2, 1943?

A Yes.

Q You yourself only saw two people killed, is that correct?

A Yes, only two.

Q Were you a member of the guerrillas?

A No, I am not.

Q Were you ever a member of the guerrillas?

A Never.

Q Have you ever seen this man at any time during the Japanese occupation that is standing here now?

A I have never seen him.

LIEUTENANT MC CULLOUGH: Let the record show that I am pointing to General Kono and he was the man who was standing.

That concludes the cross-examination.

LIEUTENANT MURPHY: Are there any questions by the Commission?

COLONEL HAMBY: Any questions by the Commission? Apparently none. Witness excused.

(Witness excused.)

CAPTAIN YARD: Carmencita Del Castillo.

CARMENCITA DEL CASTILLO

a witness for the prosecution, was duly sworn and testified as follows through Interpreters Genoves, Villaluz and Lagdameo:

LIEUTENANT SHEPHERD: If the Commission please, the testimony of this witness will relate to Specification No. 11.

DIRECT EXAMINATION

BY LIEUTENANT SHEPHERD:

Q What is your name?

A Carmencita Del Castillo.

Q What is your age?

A 23.

Q Are you a Filipino?

A Yes.

Q Where do you live?

A Ajuy, Iloilo.

Q During the Japanese occupation of Panay Island did you evacuate with your family from Ajuy to barrio Nabitasan?

A Yes.

Q While at barrio Nabitasan were you and members of your family captured by the Japanese?

A Yes, we were captured.

Q What was the approximate date you were captured by the Japanese?

A It was the 18th of September, 1943.

Q How many Japanese soldiers did you see at barrio Nabitasan at that time?

A About 60.

Q What did the Japanese do with you and the other civilians after they captured you?

A They asked us where the soldiers were. When we did not tell them anything they beat us.

Q Were you beaten?

A Yes.

Q Do you know the name of the Japanese who beat you?

A Yes.

Q What was his name?

A Colonel Watanabe.

Q I hand you Prosecution's Exhibit No. 6 and ask you whose picture it is.

A This is Colonel Watanabe.

Q This is a picture of the man who beat you at barrio Navitasan, is that correct?

A Yes.

Q Were other members of your family investigated by the Japanese.

A Yes.

Q What members of your family were investigated?

A Elias Del Castillo, my father.

Q Was he also beaten by the Japanese?

A I did not see but I heard him screaming.

Q At this time in barrio Nabitasan did you witness any killing of civilians by the Japanese?

A Yes.

Q How many people did you see killed?

A Three.

Q How were they killed?

A They were stabbed with bayonets in the stomach.

Q Do you know the names of the Japanese who killed these people?

A Yes.

Q What are their names.

A Colonel Watanabe and his executioner.

Q Do you know the name of Colonel Watanabe's executioner?

A No.

Q Do you know the names of any of the other Japanese in the group of approximately 60 that were present?

A Yes.

Q What were the names of some of the other Japanese that you know?

A Captain Fujii; no more.

Q I hand you Prosecution's Exhibit 4 and ask you whose picture it is.

A This is Captain Fujii.

Q Did you see Captain Fujii kill anybody?

A No.

Q He was merely present when the investigation was made, is that correct?

A Yes.

Q Did you see Colonel Watanabe kill anyone?

A Yes.

Q Do you the name of the person that Colonel Watanabe killed?

A Yes.

Q What was the name of this person?

A Deogracias Villaruz.

Q Do you know the names of any of the other two persons that were killed at barrio Navitasan that you saw?

A Yes.

Q Will you give us their names?

A Nicolas Agotaya and Juan -- I don't know the surname.

Q How far were you standing from these three men when they were killed?

A About three yards.

Q Was your father taken away from the barrio by the Japanese after being investigated and beaten?

A Yes.

Q What was the next time that you saw him?

A Near the beach at barrio Gaun where he was already dead.

Q Did you see him killed?

A No.

Q Do you know who killed him?

A Yes.

Q Who killed him?

A The executioner of Watanabe.

Q Why do you say it was the executioner of Watanabe since you did not see him killed?

A Because the owner of the house where my father was tied to saw the execution.

Q Did the owner tell you how your father had been killed?

A Yes.

Q How had he been killed?

A He was ordered to kneel near the beach and beheaded with the saber.

Q Were any of the three people that you saw killed at barrio Navitasan given a trial?

A None.

Q To the best of your knowledge, were any of these three men guerrillas?

A No.

Q Was your father a guerrilla?

A No.

Q Do you know of any reason for the Japanese to have killed these people?

A No.

LIEUTENANT SHEPHERD: Your witness.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Did all of these killings that you have testified about, except your father, take place in the barrio of Nabitasan on September 18, 1943?

A No.

Q What dates then did they take place on?

A The following morning, September 19.

Q Then did they take place either on the 18th or 19th of September, 1943, all of then that you have referred to?

A It was really on the 19th.

Q Was your father killed on the same day?

A No.

Q When was he killed?

A It was on the 21st.

Q Of September, 1943, you are referring to?

A Yes.

Q Have you ever heard the name of Captain Kengo Watanabe, a Japanese officer?

A No.

Q Have you ever heard the name of Major Kengo Watanabe, a Japanese officer?

A No.

Q How far is the barrio of Nabitasan from the city of Ajuy?

A About three kilometers.

Q Were the three people that you have testified about being killed all killed within the barrio of Nabitasan?

A Yes.

Q Was your father killed within that barrio?

A No.

Q Where was he killed?

A At barrio Gaun, near the beach.

Q How far is the barrio Gaun from the barrio Nabitasan?

A About four kilometers.

Q Do you know the names of any other Japanese officers besides Colonel Watanabe and Captain Fujii?

A No more.

Q At any time during the Japanese occupation have you ever seen the man standing here that I am pointing to?

A I have not seen him.

LIEUTENANT MC CULLOUGH: Let the record show that the man I referred to was General Kono and he was the man standing, that I pointed to.

(Witness excused.)

COLONEL HAMBY: The Commission will take a short recess.

(Short recess.)

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: The next witness for the prosecution is Maximo Beatingo.

MAXIMO BEATINGO

a witness for the prosecution was duly sworn and testified as follows through Interpreters Villaluz and Genoves:

LIEUTENANT SHEPHERD: If the Commission please, the testimony of this witness will relate to Specification 12.

DIRECT EXAMINATION

BY LIEUTENANT SHEPHERD:

Q What is your name?

A Maximo Beatingo.

Q How old are you?

A Fifty-four.

Q Are you a Filipino?

A Yes.

Q Where do you live?

A Barrio Progreso, Ajuy, Iloilo.

Q During the Japanese occupation of Panay Island, were you captured by the Japanese?

A Yes.

Q What was the approximate date that you were captured?

A Nineteen of September, 1943.

Q How many Japanese were in the group that captured you.

A Approximately 30 Japanese.

COLONEL CHASE: How many?

INTERPRETER VILLALUZ: Thirty.

Q Did the Japanese capture other civilians at the same time you were captured?

A Yes.

Q How many other civilians besides yourself did the Japanese capture?

A About 29.

Q Did the Japanese question you?

A Yes.

Q Did the Japanese beat you during the questioning?

A Yes.

Q Would you describe to the Commission how the Japanese beat you?

A I was slapped on the face and beaten by a rope.

Q Do you know the name of the Japanese who beat you?

A Yes.

Q What was his name?

A Watanabe.

Q Do you know the rank? Strike that. Was he an officer?

A I don't know.

Q I hand you Prosecution's Exhibit No. 6 and ask you whose picture it is?

A He is Watanabe.

Q Is this the man who beat you when you were being questioned?

A No.

Q Was he present while you were being questioned?

A Yes.

Q Is this the man who beat you when you were being questioned?

A No.

Q Was he present while you were being questioned?

A Yes.

Q Were any of the other civilians captured beaten by the Japanese?

A Yes.

Q Did you see this?

A Yes.

Q Were you ordered by the Japanese to act as guide from your barrio to barrio Gubaton?

A Yes.

Q Did you see any people killed by the Japanese in barrio Gubaton?

A Yes.

Q How many people did you see killed in barrio Gubaton?

A Fifteen.

Q How far were you from the place where these people were killed?

A About five meters.

Q How many men were there among the fifteen people that you saw killed?

A Eleven.

Q And were the other four all women?

A Yes, women.

Q How were these people killed?

A They were tied behind their backs, their hands tied behind their backs; then beheaded.

Q Do you know the names of any of the Japanese who killed these people?

A No.

Q Were they the same group of soldiers that had apprehended you in barrio Navitasan? Strike that. I believe my barrio is incorrect.

Q Was this the same group of Japanese soldiers that had captured you?

A Yes.

Q Was Colonel Watanabe present whon the killing was done?

A Yes.

Q Do you know the names of any of the people killed?

A Some of them.

Q Would you name some of the victims that you recognized?

A Claudio Homicillada, Estrella Homicillada, Crisostomo Diket, Jaymo Durin, and Soledad Gonzales.

Q Was Jayme Durin killed by the Japanese?

A Yes, he was killed.

Q Did you see any other people killed in barrio Gubaton other than the fifteen already mentioned?

A Yes.

Q How many more did you see killed at barrio Gubaton?

A Four more.

Q And who were these people?

A I don't know their names.

Q Were any children?

A Yes.

Q How many were children?

A Three were children.

Q How did the Japanese kill the children?

A The Japanese took hold of their feet, swing them twice in the air, and then hit them on the ground, then cast them to the fire.

Q How far were you from the place where these four were killed?

A More or less two meters.

Q Was Colonel Watanabe present when these people were killed?

A Yes, he was.

Q To the best of your knowledge, were any of the persons that you have mentioned as being killed tried before they were killed?

A No.

Q To the best of your knowledge,were any of the people that you recognized that were killed, guerrillas?

A None.

Q What was the age of the youngest child that you saw killed in barrio Gubaton?

A About eight months.

Q And were you released by the Japanese after you had guarded them to barrio Gubaton?

A No.

Q Where were you released by the Japanese?

A At barrio Gaun.

LIEUTENANT SHEPHERD: Your witness.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Did all of the killings which you have testified about take place in the barrio Gubaton on September 19, 1943?

A Yes.

Q Were all of those people killed within the barrio Gubaton?

A Yes.

Q Do you know Cayetano Narra?

A Yes.

Q Did you see him on September 19 in Gubaton?

A No.

Q How many people live within the barrio of Gubaton?

A I cannot tell you how many.

Q Can you give me approximately how many people live in that barrio?

A More or less, fifty.

Q How long have you known Mr. Narra?

A More or less over a year.

Q Do you know whether or not you and Mr. Narra, who has previously testified in this case, are testifying about the same incident?

A His was different.

Q Do you know whether or not it happened on the same day at the same barrio?

A Yes.

(Accused rises.)

Q Have you ever seen the Japanese officer standing now any time during the Japanese occupation?

A No.

LIEUTENANT MC CULLOUGH: Let the record show that the man standing whom I referred to is General Kono.

That's all the cross-examination.

CAPTAIN YARD: Does the Commission have any questions?

COLONEL HAMBY: The Commission has no questions.

(Witness excused.)

CAPTAIN YARD: Prosecution's next witness is Filomeno Cirineo.

FILOMENO CIRINEO

a witness for the prosecution was duly sworn and testified as follows through Interpreters Lagdameo, Villaluz and Genoves:

LIEUTENANT MURPHY: Sir, the testimony of this witness will refer to the alleged atrocities in Specifications 13, 14, and 15.

DIRECT EXAMINATION

BY LIEUTENANT MURPHY:

Q Please state your name.

A Filomeno Cirineo.

Q What is your age?

A Twenty.

Q What is your nationality?

A I am a Filipino.

Q What is your present address?

A Barrio Progreso, town of Ajuy.

Q Is that on the island of Panay?

A Yes.

Q What is your occupation?

A Farming.

Q Were you ever caught by members of the Imperial Japanese Army?

A Yes.

Q Where were you caught?

A At barrio Gaun.

Q When, approximately?

A On or before 19 of September 1943.

Q For about how long were you held by the Japanese?

A I was held by the Japanese for three days.

LIEUTENANT MURPHY: There could be an error there. (To interpreter) Will you ask that question again?

(Interpreter translated to the witness.)

A About two months.

Q Did you, following your apprehension, accompany the Japanese on an expedition?

A Yes.

Q What were your duties on the expedition?

A I used to carry rice on my shoulder.

Q Then you were a cargador?

A Yes, I am a cargador.

Q Where did you join the expedition?

A In the month of September.

Q Where?

A At Sara.

Q About how many Japanese soldiers were on the expedition?

A More or less 300 Japanese.

Q Did you recognize any of the Japanese members of the expedition?

A Yes.

Q Whom did you recognize?

A Otsuka.

Q How did you happen to know that this soldier's name was Otsuka?

A Because he was the one to whom I was always with and the boys also told me so.

Q What boys also told you so?

A My other companions who are also helpers for the Japanese.

Q Did you witness the killing of any unarmed Filipino civilians by the Japanese in Sara?

A Yes.

Q About how many Filipinos did you see killed in Sara?

A More or less twenty killed.

Q What was the approximate date of this killing in Sara?

A More or less, the twentieth.

Q How were these people killed?

A Their hands were tied behind their backs. They were beheaded with sabers.

Q Were there men, women, and children among the twenty killed?

A Yes.

Q How were the children killed?

A They were stabbed with bayonets.

Q Did you recognize any of the Japanese who took part in the killing of the twenty men, women, and children?

A Yes.

Q Who?

A Otsuka.

Q About how many of the twenty did Otsuka kill?

A More or less ten.

Q Did you know any of the victims at Sara?

A No, no others.

LIEUTENANT MURPHY: I will ask the question again.

Q Did you know the names of any of the people killed in Sara?

A Yes, Coronacion Deza.

LIEUTENANT MURPHY: Now, there could be a mistake as to the question. (To reporter.) Will you give that to the interpreter?

(The last question was read by the reporter and translated by the interpreter.)

Q In Sara, you saw about 20 people killed?

A Yes.

Q Did you know the names of any of the people killed in Sara?

A At Sara. I don't know anybody.

Q From Sara where did the Japanese expedition go?

A At Samponongbolo.

Q What was the approximate date of your arrival there?

A I cannnot remember the date when we left.

Q Was it shortly after you left Sara?

A Yes.

Q Did you witness the killing of any Filipino civilians by the Japanese soldiers in Samponongbolo?

A Yes.

Q About how many Filipinos did you see killed there?

A More or less twenty-one.

LIEUTENANT MURPHY: May I call the Commission's attention to the fact that the specifications allege about 12.

Q Now, were these twenty-one and the forty that you saw killed in Sara, all unarmed?

A They were all unarmed.

Q Of the twenty-one that you saw killed in Samponongbolo, were there Chinese and Filipinos in the group?

A Yes.

Q How were the twenty-one killed?

A They were also tied. Their hands were tied also behind their backs, and beheaded with sabers.

Q Were there men, women and children included in the group?

A Yes.

Q Did you recognize any Japanese soldiers who took part in the execution of the twenty-one?

A Yes.

Q Whom did you recognize?

A Otsuka.

Q Did you know the names of any of the victims of this group of twenty-one?

A Yes.

Q How many did you recognize?

A One.

Q What was the name of that individual?

A Coronacion Deza.

Q Before Coronacion Deza was killed was she mistreated in any way?

A Yes.

Q In what way was she mistreated?

A They disgraced her.

Q And what do you mean by "They disgraced her"?

A They raped her.

CAPTAIN YARD: Will you tell the witness to speak up, please?

(Interpreter does so.)

Q Of the twenty-one victims about how many would you say Otsuka killed?

A More or less, ten.

Q From Samponongbolo where did the expedition go?

A From Samponongbolo the expedition proceeded to Maligayligay.

Q Did you witness the killing of any unarmed Filipino civilians of the barrio Maligayligay?

A Yes.

Q Approximately how many did you see killed here?

A More or less forty.

Q Were there men, women, and children included in the group?

A Yes.

Q How were they rounded up?

A They ran after them.

Q Did you witness their killing?

A Yes.

Q How were they killed?

A They were also tied behind their backs and beheaded.

Q How were the children killed?

A The children were bayoneted.

Q Did you know any of the victims?

A None

Q Did you recognize any Japanese soldier who took part in the killing of these forty?

A No.

LIEUTENANT MURPHY: Will you read back the question, please?

(The last question was read by the reporter.)

LIEUTENANT MURPHY: (To interpreter) Will you repeat the question?

(Interpreter does so.)

A Yes.

Q Whom did you recognize?

A Also Otsuka.

Q I show you a photograph marked Prosecution's Exhibit No. 5 and ask you to identify the person pictured thereon.

A It is a picture of Otsuka.

Q Is that the Otsuka whom you have referred to throughout your testimony?

A Yes.

LIEUTENANT MURPHY: You may examine.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q I believe that you said the first killing that you saw took place on September 20, 1943, in Sara, is that correct?

A I cannot understand the question.

Q On what date was the first killing that you saw?

A In Sara?

Q Yes, wherever you saw it.

A September 20?

Q What barrio was that in?

A In Sara itself.

Q Was that in 1943?

A Yes.

Q How many people were killed there altogether that day?

A More or less 20.

Q The next day or two you testified that you went from there to the barrio Samponongbolo, is that correct?

LIEUTENANT MURPHY: I object to that. I believe he testified that shortly thereafter --

LIEUTENANT MC CULLOUGH: He said the next two or three days, I believe.

COLONEL HAMBY: Objection overruled.

A Yes.

Q How long did you stay in the barrio Samponongbolo?

A More or less two hours.

Q How many people did you see killed there altogether?

A More or less 40.

Q Did you go to Maligayligay the same day?

A Yes.

Q Would you say that all of the killings that you have testified about within the three barrios that you have named took place within a period of one week?

A Yes.

Q How long did you work for Lieutenant Otsuka as a carrier?

A Two months.

Q Were you with him nearly every day during that time?

A Yes.

Q Did you see the other officers who were with him or that came to call on him at that time?

A Yes, I also saw them.

Q I hand you Prosecution's Exhibit No. 4 and ask you to state if you know who that is.

A I don't know his name.

Q Have you ever seen that man before at any time?

INTERPRETER LAGDAMEO: What was the answer to that last question?

(The last answer was read by the reporter.)

INTERPRETER LAGDAMEO: It was "I don't know him," not "I don't know his name."

Q Have you ever seen the man shown in Exhibit 4 at any time?

A No.

Q I hand you Prosecution's Exhibit No. 6 and ask you to state if you have ever seen that man or know what his name is.

A No.

Q During the time you worked with Lieutenant Otsuka did you ever see this man shown in Exhibit No. 6?

A No.

Q How far is the barrio Maligayligay from Sara?

A I cannot tell you how far.

Q Is it five or six kilometers?

A I cannot estimate it.

Q Would you say that they are near to each other?

A Quite far.

Q How long did it take you to walk from Sara to Samponongbolo?

A I cannot estimate because I am unschooled.

Q You are what?

A Unschooled.

Q What do you mean by you are "schooled"?

CAPTAIN YARD: "Unschooled."

Q Did you go fron Sara to Samponongbolo by foot in less than a day?

A It will not take a day.

Q Now, how long would it take you to walk from Samponongbolo to the barrio Maligayligay?

A I cannot tell you how long because at that time I seem to have lost my senses, in calculation of time.

Q Have you ever heard the name of a Japanese officer by the name of Captain Kengo Watanabe?

A No.

Q. Have you ever heard the name of a Japanese officer by the name of Major Kengo Watanabe?

A No.

Q Have you ever seen this Japanese officer standing here before at any time during the Japanese occupation?

A No.

LIEUTENANT MC CULLOUGH: Let the record show that the man standing whom I referred to is General Kono.

That's all.

CAPTAIN YARD: Does the Commission have any questions?

COLONEL HAMBY: The Commission has no questions.

CAPTAIN YARD: Sir, we have one additional question to ask this witness. May we ask it?

COLONEL HAMBY: Yes.

BY LIEUTENANT MURPHY:

Q During the cross-examination I believe you said there were 40 killed in Samponongbolo. Were there 40 or twenty-one?

A In Samponongbolo there were twenty-one. In Maligayligay there were forty.

COLONEL HAMBY: The Commission will take a short recess.

(Short recess.)

COLONEL HAMBY: The Commission is now in session.

LIEUTENANT MC CULLOUGH: At this time, if the Commission please, we are getting ready to send out Exhibit A to have it photostated to be placed in the record. We noticed one slight error in that record. We have shown that error to the prosecution and they have no objection to the correction that we propose to make, that is, changing the word "August" on page 2 at the bottom of the page, to June 1944, in order to correct that error.

COLONEL HAMBY: There being no objections it is so ordered.

CAPTAIN YARD: Prosecution's next witness is Pedro Iraya.

PEDRO IRAYA

a witness for the prosecution, was duly sworn and testified as follows through Interpreters Lagdameo, Villaluz and Geneves:

LIEUTENANT MURPHY: This witness will testify as to the atrocities alleged in specifications numbered 16 and 17.

DIRECT EXAMINATION

BY LIEUTENANT MURPHY:

Q Please state your name.

A Pedro Iraya.

Q What is your age?

A 42 years.

Q What is your nationality?

A Filipino.

COLONEL CHASE: Will you straighten out the name of this witness, please.

LIEUTENANT MURPHY: I-R-A-Y-A, Iraya.

Q What is your present address?

A In Sara.

Q Is that in Iloilo Province, Panay Island?

A Yes.

Q What is your occupation?

A Merchant.

Q Were you ever apprehended by members of the Imperial Japanese Army?

A Yes.

Q Where were you apprehended?

A In barrio Alaginay.

Q What was the approximate date of your apprehension?

A September 23, 1943.

Q Did the Japanese force you to accompany them on an expedition?

A Yes.

Q About how many Japanese were on the expedition?

A If ever they get together, there were more or less 100.

Q What were your duties on the expedition?

A I acted as a cargador.

Q Were you mistreated by the Japanese in Alaginay?

A Yes.

Q Will you tell in your own words how you were mistreated?

A When they captured me they tied my hands behind my back. Then they struck my head with the halo.

INTERPRETER LAGDAMEO: The instrument used in pounding rice.

Q Were you beaten into unconsciousness?

A After striking me three times I became unconscious.

Q Did you recognize any of the Japanese who beat you?

A I did not know.

Q Did you recognize any Japanese who were members of the expedition that you were on?

A Yes.

Q Whom did you recognize?

A Sergeant Matsuzaki and Colonel Watanabe.

Q How do you know the names of these two individuals?

A Because in the evening when I was questioned by Colonel Watanabe his interpreter told me to answer the truth to the questions as "imputed" by Colonel Watanabe.

INTERPRETER LAGDAMEO: Correction: " -- asked by Colonel Watanabe.

Q How did you know the name of Sergeant Matsuzaki?

A Because in the next day on the 24th of September when eight men were killed, one Filipino pointed out to me Sergeant Matsuzaki. He said, "Kill those people because they are telling lies."

Q Who said, "Kill those people because they are telling lies"?

A That Filipino was the one who told me to kill the people.

INTERPRETER LAGDAMEO: Correction, please. The witness said that the Filipino told him that Sergeant Matsuzaki will kill those eight persons because they were telling lies.

Q In regard to these eight men you have just referred to, did you witness their execution?

A Yes, I saw it.

LIEUTENANT MC CULLOUGH: It appears that the interpreters are adding to the statements made by the witness. We wish them to be cautioned in regard to that. Now, here in this case the witness answered yes. Then there was a tail end tacked onto it. I don't remember the exact words, but then there were several other words, "Yes, it was him," where the answer itself was merely yes. I don't believe we are getting a correct translation here and I believe the Commission should caution the interpreters about that so that we will have a true record.

COLONEL HAMBY: The chief interpreter and the other interpreters will make every effort to get the translation correct as given by the witness.

Proceed.

LIEUTENANT MURPHY: Will you read the last question.

(The last question was read by the reporter.)

Q Where did this execution take place?

A Barrio Alaginay.

Q Were these eight men armed?

A None.

Q Were they Filipinos?

A Yes.

Q Did you recognize any of the Japanese who took part in the killing of the eight men?

A It was Sergeant Matsuzaki who killed those men while Colonel Watanabe was present.

Q Did Colonel Watanabe appear to be the commander of the expedition upon which you were a cargador?

A According to what I know, yes.

Q How did Sergeant Matsuzaki kill these eight men?

A They were ordered to kneel and were beheaded by a Samurai sword.

CAPTAIN YARD: May it please the Commission, subject to any objection by the defense, and with the permission of the Commission, we would like to correct the spelling of the barrio Alaginay in Specification 16. In the Specification the spelling is A-l-a-g-i-n-g-a-y. The last "g" should be deleted. The correct spelling should be A-l-a-g-i-n-a-y.

COLONEL HAMBY: There being no objections it is so ordered.

LIEUTENANT MURPHY: Will the reporter read the last question and answer, please.

(The last question and answer were read by the reporter.)

BY LIEUTENANT MURPHY:

Q Did you know the names of any of the eight men?

A None.

Q From Alaginay where did the expedition proceed?

A The next day, the 25th, we proceeded to barrio Calamingan.

Q How long did the expedition remain there?

A Up to September 28th.

Q Did you witness the killing of any Filipino civilians by the Japanese there?

A Yes.

Q About how many Filipinos did you see killed?

A More or less forty.

Q Did this forty include men, women, and children?

A Yes.

Q How were the people executed?

A They were tied and made to fall in line, and then Sergeant Matsuzaki hacked them and stabbed them.

Q How were the children killed?

A Some of them were stabbed; some of them were hacked.

Q Did you see Sergeant Matsuzaki kill the entire group?

A Yes.

Q Were the victims armed?

A None.

Q Did you know the names of any of these forty victims?

A Some of them I know.

Q Will you kindly state the names of those whom you knew?

A Pacita Iraya and her four children.

Q How old were these children?

A The eldest, seven years; the next, five years; the third, three years; and the last is one year.

Q Were there any other victims known to you?

A Yes.

Q Name them.

A The teacher, Mrs. Manuelita de Inprogo; Leticia Inprogo.

Q Anyone else?

A The three sisters, the three Garcia sisters.

Q What were the average ages of the Garcia sisters?

A The eldest, nineteen; next, seventeen; and the other, fifteen.

Q From Calamingan where did the patrol go?

A We proceeded to Sara.

Q Did you witness the execution of anyone on the way to Sara?

A Two men.

Q Who were these men?

A One was a teacher, Celeso Dolendo, and Sabas Franco.

Q Were they Filipinos?

A Yes.

Q Were they members of the expedition?

A No.

Q Did you witness the death of any cargadors while you were a member of the expedition?

A They were the ones, those two.

Q In other words, these last two victims were members of the expedition in that they were Filipino cargadors?

A I am not very sure because I saw them only during the time we were on the way.

Q Did you witness their execution?

A Yes.

Q Did you recognize the Japanese soldiers who killed them?

A No.

Q From Sara where did the expedition proceed?

A The next day we proceeded to San Dionisio.

Q What was the approximate date of your arrival there?

A It was September 29th.

Q Were you released at this time?

A Yes.

Q Why were you released by the Japanese?

A Because they were convinced that what I told them was true.

Q What had you told them?

A Because when they captured me they asked me where the Army was, and I answered, They went there and here and there.

Q Whom do you mean by "they"?

A The Army.

Q The guerrilla army?

A Yes.

Q Was Colonel Watanabe present at the execution of the forty men, women, and children at barrio Calamingan?

A Yes.

Q Did he witness the execution?

A Yes.

Q I now show you a photograph marked Prosecution's Exhibit No. 6 and ask you to identify the picture thereon.

A Colonel Watanabe.

Q Is that the Colonel Watanabe whom you referred to as being present on the expedition?

A Yes.

Q I show you a photograph marked Prosecution's Exhibit No. 9 and ask you to identify, if you can, the picture thereon.

A Sergeant Matsuzaki.

Q Is that the person whom you testified executed the people?

A Yes.

LIEUTENANT MURPHY: You may ask.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q What was the name of the barrio, again, where you were captured?

A Alaginay.

Q What was the date?

A September 23, 1943.

Q And it was the following morning that the eight people were killed, is that correct?

A Yes.

Q In what barrio was that?

A Alaginay.

Q And the next day you went to the barrio of Calamingan and were there from September 25 to September 28, is that correct?

A Yes.

Q When, then, did you go to Sara?

A 28 September.

Q Then the following morning did you go to the barrio San Dionisio?

A Yes, September 29.

Q Were all of the people who were killed between September 24 and September 29 killed in the three barrios that you have named?

A Only in the two barrios.

Q Which two were those?

A Alaginay and Calamingan.

Q What town is the barrio of Alaginay near?

A Sara.

Q How far in kilometers is it from Sara?

A It is no kilometers because it passes through the mountains and there are no kilometer posts.

Q Is there a road between the barrio of Alaginay and Sara?

A There is a way but only trails.

Q Would you estimate the distance between the barrio of Alaginay and Sara?

A More or less twenty-five kilometers.

Q Would you estimate the distance between the barrio of Alaginay and Calamingan?

A From Alaginay to Calamingan, more or less five kilometers.

Q Is the barrio of Calamingan also in the mountains and off of the highway?

A Far from the road.

Q I believe that you said a Filipino said that Matsuzaki said to kill the civilians because they were telling lies, is that correct?

A That Filipino told me that Matsuzaki will kill those men because they were telling lies.

Q Did you hear Matsuzaki say that?

A No. That Filipino was the one who told me.

Q Who was that Filipino?

A I did not know him.

Q Was he a civilian in your group or was he a civilian attached to the Japanese Army?

A Civilian who was with the Japanese.

Q You have referred to a guerrilla army. What army are you talking about?

A The army organized by Peralta in Panay.

Q Do you know whether or not that army of Colonel Peralta had been engaged in combat with the Japanese Army during the month of September 1943 in that area any place?

Q Were the people in that area supporting Colonel Peralta's army?

A I did not know.

Q Did you yourself ever see Colonel Peralta at any time?

A No.

Q Were you a guerrilla?

A Yes.

Q Were you attached to the 6th Guerrilla Army?

A 6th Military District?

Q Yes.

A Yes.

Q Were you with the 61st Division of Infantry of the guerrilla army?

A No.

Q What division were you attached to?

A It was in the 6th Military District, viz., Quartermaster.

Q Where was the base of your operations during the month of September 1943?

A Barrio Alabidan, town of Sara.

Q How many guerrillas were in that unit in September 1943?

A About 100.

Q What branch of the service were they in?

A Base Quartermaster.

Q Would you say that in the month of September 1943 Colonel Peralta's guerrilla army was well armed?

A No, we do not have arms.

Q Do you mean to say that Colonel Peralta's army in 1943 was unarmed?

A There was, but few.

Q How many men were in Colonel Peralta's army during 1943, its total strength, if you know?

A I did not know how much the force of Peralta; only in ours.

Q Have you ever heard approximately how many men Colonel Peralta had under him in 1943?

A No.

Q Was there as many as 20,000?

A I don't know.

Q Were you in his army in 1944?

A I was theoretically under Captain Zosa.

Q Do you know, then, who was his commanding officer?

A Yes.

Q Who was it?

A Peralta.

Q What was Zosa's rank?

A To whom do you refer?

Q The last guerrilla officer that you testified about. I may have mispronounced his name.

A Colonel Peralta.

Q Then you testified as to who your commanding officer was. What was his name?

A Captain Zosa.

Q Do you know who his commanding officer was?

A Colonel Peralta.

Q No, the Captain Zosa that you just referred to. Who was his commanding officer?

A Colonel Peralta.

Q When did you first join the guerrilla organization?

A 21 November 1942.

Q Were these other people that you testified about that were killed in these two barrios, were they guerrillas?

A No.

Q Do you know whether or not they were supporting the guerrillas?

A No.

Q You mean, "No, you don't know" or "No, they were not supporting the guerrillas"?

A I do not know.

Q Do you know what division or regiment of the guerrilla army was stationed in or around the city of Sara in September of 1943?

A That was only ours which was stationed at Sara.

Q Do you know Major Fernandez?

A No.

Q Do you know Lieutenant Colonel Grasparil?

A No.

COLONEL HAMBY: The Commission will recess until 1300.)

(The Commission thereupon recessed at 1140 hours.)

AFTERNOON SESSION

The Commission convened, pursuant to recess, at 1300 hours, 17 April 1946.

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: Sir, may the record show that the following members of the Commission are present: Colonel Hamby, Colonel Goff, Colonel Warren, Lieutenant Colonel Chase and Captain Ellingson; that the accused, together with his defense counsel and personal interpreter and members of the prosecution are present.

CAPTAIN YARD: Will the interpreter remind the witness that he is still under oath.

(The interpreter translated to the witness.)

CROSS-EXAMINATION (CONT'D.)

BY LIEUTENANT MC CULLOUGH:

Q What rank did you hold in the guerrilla army, yourself?

A Staff sergeant.

Q And during that time were you stationed at the quartermaster supply point at Sara?

A Yes.

Q What were the major functions of your quartermaster supply headquarters at Sara?

A To buy rice from the civilians.

Q Is it not true that the district around Sara, Ajuy, and Passi was under the jurisdiction of the 64th Regiment, 61st Division of the 6th Military District of Guerrillas?

A I did not know the jurisdiction of 6th Military District.

Q Have you heard of the 6th Military District of the Guerrilla Army?

A I heard but I did not know its jurisdiction.

Q Was Colonel Peralta your commanding officer?

A Captain Zosa was my commanding officer.

Q Was Colonel Peralta over the captain you have just named?

A Yes.

Q Is it not true that the guerrilla army razed Sara about December of 1942?

A I know there was a fire conflagration in Sara but I don't know who did it.

LIEUTENANT MURPHY: Read the last question and answer.

(The last question and answer were read by the reporter.)

Q Is it not true that the guerrillas burned Ajuy and destroyed the church in that municipality?

A I did not know.

Q Do you know about the guerrillas destroying the churches and school buildings in Panay at any time?

A I did not know because I stayed in the office in the mountains.

Q Was that the supply office that you previously referred to?

A In the office of Captain Zosa.

Q Was that the principal supply center for that district?

CAPTAIN YARD: Just a moment, please. Will you qualify that? What district?

Q In that 6th Military District?

A It was only in Sara.

Q Do you know where Colonel Peralta's field headquarters were in September, 1943?

A No.

Q Do you know approximately how many Japanese soldiers were killed in and around Sara in September of 1943?

A No.

Q All during the occupation were you stationed in and around Sara?

A No more.

Q During the Japanese occupation were you living in and around Sara at all times.

A We were not already in Sara during the Japanese time.

Q I ask you if you have ever seen this man standing here any time during the Japanese occupation in or on the island of Panay?

A No.

LIEUTENANT MC CULLOUGH: Let the record show that the man I referred to standing was General Kono.

That finishes the cross-examination

COLONEL HAMBY: Redirect examination?

REDIRECT EXAMINATION

BY LIEUTENANT MURPHY:

Q To your knowledge were those whom you saw killed by the Japanese given a trial of any kind?

A No.

LIEUTENANT MURPHY: No more questions.

COLONEL HAMBY: Questions by the Commission? There appear to be none.

The witness is excused.

(Witness excused.)

CAPTAIN YARD: The witness whose testimony relates to Specification No. 18 has not yet arrived; as a matter of fact, we don't expect him until the latter part of the week. Therefore, we would like to pass that specification at this time and proceed to the next specification. We will call that witness to testify as to that specification later.

COLONEL HAMBY: Proceed.

CAPTAIN YARD: The next witness is Nonito Tubungbanwa.

NONITO TUBUNGBANWA

a witness for the prosecution, was duly sworn and testified as follows:

LIEUTENANT MURPHY: This witness will testify as to the alleged atrocities set out in Specifications 19, 20, 21 and 22.

DIRECT EXAMINATION

BY LIEUTENANT MURPHY:

Q Will you please state your name?

INTERPRETER VILLALUZ: The witness says he will speak in English.

LIEUTENANT MURPHY: All right.

A Nonito Tubungbanwa.

Q What is your age?

A Twenty-seven years old.

Q What is your nationality?

A Filipino.

Q And your present address?

A Jaro, Iloilo City.

Q Is that on Panay Island?

A Panay Island.

Q What is your occupation?

A Painter.

Q Were you ever apprehended by members of the Imperial Japanese Army?

A Yes, sir.

Q When did this take place?

A July, 1943.

Q Where were you taken by the Japanese?

A I was taken at my house in Jaro, Iloilo City.

Q And where were you kept by the Japanese?

A I was captured in my house in our home in Jaro, Iloilo City.

Q And were you confined in a jail?

A Provincial jail at Iloilo City.

Q During the time that you were held by the Japanese, did you ever accompany them on an expedition.

A Yes, sir.

Q Where did that expedition leave from?

A We leave Iloilo City and went to Pasi.

Q What was the approximate date of your leaving Iloilo City?

A About September 10, 1943.

Q That was when you left with the expedition?

A Yes, sir.

Q How many Japanese were on the expedition?

A There were about 500 Japanese soldiers.

Q Were there many Filipinos on the expedition?

A There were; there were many Filipinos with us, on the expedition.

Q What were the duties of the Filipinos?

A Most of them were cargadors, like myself.

Q What means of transportation did you use in leaving Iloilo City?

A We rode in trucks.

Q For how long did you ride in trucks?

A We rode in the trucks until we reached about one kilometer from the town of Passi, and we went or walked to Passi.

Q About how long did it take you to get from Iloilo City to -- what was the name of that town?

COLONEL HAMBY: Passi, P-A-S-S-I.

Q About how long did you ride on the trucks?

A We arrived in Passi late in the afternoon, about seven hours.

Q Did you ride all the way to Passi in trucks?

A No, up to about one kilometer from the town of Passi. The bridge was broken, was destroyed.

Q Did you recognize any Japanese members of the expedition?

A Yes, sir.

Q Will you state the names of those whom you recognized?

A There was a Captain Watanabe, Otsuka, Hirata.

Q What was Hirata's rank?

A He was a sort of mess sergeant.

Q Who else?

A Matsuzaki.

Q Anyone else?

A And Shin of the Military Police.

Q How did you happen to know the names of these Japanese?

A Because I went with them as a cargador.

Q What was the date of your arrival in Passi?

A We arrived in Passi in the afternoon of September 10, 1943.

Q In Passi, did you witness the execution of anyone?

A No, I did not.

Q Did you see anyone apprehended in Passi?

A Yes.

Q How many did you see apprehended in Passi?

A There were three Filipino civilians, two boys and one girl, who were brought to the prison we are staying at by the Japanese patrols.

Q And were they examined and questioned?

A Yes, they were.

Q The next day, did you hear what happened to the two boys and the girl?

A One of our companions told me that these three were beheaded on the banks of the river.

Q Did you know the victims?

A No, I don't know.

Q Did you know or hear who the Japanese were who killed these three people?

A No, I did not.

Q Did you witness the execution of any cargadors near Passi?

A No.

Q Did you hear that two cargadors had been killed near Passi?

A Yes, sir, I did.

Q Who told you this?

A One cargador who was with us.

Q And did he say who killed the two cargadors?

A Yes, he did.

Q Who was that person?

A Hirata.

Q From Passi, where did the expedition go?

A We went to a barrio near Passi named Lungao.

Q Did you witness any atrocities by the Japanese in Lungao?

A Yes, sir, I did.

Q Will you tell in your own words what you witnessed?

A After the civilians were questioned, the houses in that barrio were burned down. While the houses were burning, some Japanese officers and soldiers go to the civilians,and especially the children, and they thrust the bayonets in the bodies of the children and throw them to the fire.

LIEUTENANT MURPHY: Will the reporter read that answer, please.

(The last answer was read by the reporter.)

Q How did they kill the men and women?

A They were beheaded with the swords.

Q What was done with their bodies?

A The bodies were thrown to the fire.

Q Men and women and children?

A Yes, sir.

Q Did you yourself witness these killings?

A Yes, sir.

Q Approximately how many do you believe were killed in the barrio of Lungao?

A There were about twenty-six in all.

Q Did you know any of the victims?

A No, sir, I did not.

Q Did you recognize any of the Japanese who took part in the killing of the twenty-six?

A No, I don't.

Q Did you witness any other killings near Passi?

A Yes, sir.

Q What were these?

A There were three Chinese families, together with some Filipino civilians.

Q About how many were in this group?

A There were about 30 persons in all.

Q And was this in a barrio or was it just near Passi?

A It was in the same barrio.

Q Same barrio? What barrio?

A Lungao.

Q And these 30 persons were a different group from the 26 who were thrown in the fire?

A Yes, sir.

Q How were these 30 people killed?

A According to the Chinese who were taken along by the Japanese, those who were left behind were all beheaded and thrown to the fire.

Q Then these 30 were thrown into the fire too?

A Yes, sir.

Q Did you witness the killing of these 30?

A No.

Q And of the twenty-six that you did witness, were there any Chinese in the group?

A There were none.

Q You spoke of the Chinese informing you of the death of these three Chinese families and Filipinos totaling 30. Who were those Chinese?

A I don't know the names of these Chinese.

Q Did they join your expedition?

A Yes, sir, they were taken along by the Japanese.

Q As what?

A Cargadors.

Q From Lungao, where did the expedition proceed?

A We went to Salngan.

Q Is that barrio near Passi?

A Yes, sir.

Q Did you witness the killing of any civilians in Salngan?

A Yes, sir.

Q How many people were killed there?

A There were about 18 persons killed in Salngan.

Q Were there men, women and children included in the group?

A Yes, sir, there were.

Q Did you witness the killing of 18?

A Yes, sir.

Q How were the children killed there?

A The children were taken hold in the feet by some Japanese soldiers and their heads bashed on the rocks.

Q The children were taken --

A The children were taken by the feet and their heads bashed on the road.

Q Do you mean to say the body of the child was raised and struck to the ground?

A Yes, struck on the ground.

Q Its head was bashed?

A Yes.

Q Did you witness any of the Japanese who took part in this killing? Did you recognize any of the Japanese who took part in the killing of these 18?

A No, I don't.

Q Do you know the names of any of the victims so far that you have mentioned?

A There was one Chinese family that I know.

Q What was the name of that Chinese family?

A Uy Chia.

LIEUTENANT MURPHY: That will complete the testimony as to Specification No. 19.

Q From Salngan where did the expedition proceed?

A From Salngan we went to Jimomoa.

Q To go back to Specification 19, you have testified as to seeing 18 persons killed in Salngan. Did you witness any other separate killings there?

A While we were on the way from Lungao to Salngan I saw there were dead bodies in the road, in the way.

Q Approximately how many dead bodies did you pass?

A There were 50 dead bodies in the road,about.

Q Did you recognize any Japanese who took part in the killing of the 50?

A No.

Q Did you see them killed?

A No.

Q How did their bodies appear? In other words, had they been bayoneted or beheaded?

A Some were beheaded while others were bayoneted once.

Q So, until the expedition left Salngan you are unable to identify any of the Japanese who took part in the killings that you have just described.

A No.

Q You have testified that the expedition went from Salngan to barrio Jimomoa.

A Yes, sir.

Q When was the approximate date of the arrival of the expedition at Jimomoa?

A On or about September 17.

Q Did you witness any atrocities in the barrio of Jimomoa?

A Yes, sir.

Q Will you explain in your own words what you saw.

A The civilians were rounded up in Jimomoa and then after they were questioned, some were beheaded while others were killed by bayonets.

Q About how many were killed there?

A About 40 persons killed.

Q Did you recognize any of the victims?

A There was two families.

Q Who were these two families?

A One family was called the Balleza.

Q And what was the other family's name?

A Yap.

Q How many members were there in the Yap family?

A There were five members.

Q Who were they?

A Mariano Yap and his wife and three children.

Q How old were the children?

A The oldest was a girl about 12 or 13 years old, and the second boy was about 10 years old, while the other one is about 8 years old.

Q How was the Yap family killed?

A They were beheaded.

Q Did you recognize any of the Japanese who took part in this killing?

A Yes.

Q Who was that Japanese?

A. It was Shin.

Q Did Shin kill the entire family?

A Yes, sir.

Q You have mentioned the execution of the Balleza family in this same barrio. Will you describe in your own words the facts leading up to that execution?

A All the civilians that were rounded up were asked one by one if they belonged to the Balleza family. After all the civilians were questioned they were separated into two groups and the group that belonged to the Balleza family were taken to another place where they were killed.

Q Approximately how many were in this group?

A There were about 40.

Q There were about 40 in that group, exclusive of the Yap family which you have previously testified to?

A No, they were together.

Q They were executed together. In other words, the Yap family the Balleza family, and the other people total 40?

A Yes, sir.

Q How was this group killed, that is, exclusive of the Yap family?

A They were beheaded while others were killed with bayonets and others were shot.

Q Were there any children in the group?

A Yes, sir, there were.

Q How were the children killed?

A They were killed with bayonets and thrown into the fire.

Q Did they burn the bodies?

A Yes, sir, they did.

Q Did you recognize any of the Japanese, outside of Shin who killed the Yap family, killing the remaining group?

A Yes, sir.

Q Who were the Japanese who took part in this execution?

A Captain Watanabe, Otsuka, and Hirata.

Q Were there other Japanese whom you did not recognize helping out in the killing?

A Yes, sir, there were other Japanese officers.

Q Where did the execution proceed to then?

A To Mabang Sapa, Nueva Invencion.

Q When did the expedition proceed to Ajuy?

A Yes, sir.

Q What was the approximate date of your arrival in Ajuy?

A About September 19 or 20.

Q Did you leave the expedition in Ajuy?

A Yes, sir.

Q Why did you leave the expedition in Ajuy?

A I asked permission to be returned to Iloilo because my feet were all swollen and there were sores all over my shoulders and back.

Q How did you leave Ajuy?

A We rode on a motor launch, went to Iloilo.

Q Did you notice a collaborator by the name of Teofilo Noble on the expedition?

A Yes, sir.

Q Did you see him now and then?

A Yes, sir.

Q Did he return to Iloilo with you on the motor launch from Ajuy?

A Yes, sir.

Q Did you notice, while you were on the expedition, the tactics that the Japanese used in searching the area being covered?

A Yes, sir, the Japanese divided into groups.

Q They were divided into groups?

A Yes, sir.

Q Then what would the groups do?

A Some went to the other barrios.

Q Did they have meeting places where they would all get together?

A Yes, sir.

Q They appeared to you to use those tactics throughout the expedition?

A Yes, sir.

Q While you were on it?

A Yes, sir.

Q From the time before you left Ajuy did you witness any killings there?

A Yes, sir.

Q About how many did you see killed in Ajuy?

A About eighteen persons.

Q Did you know any of these people?

A No.

Q Did you notice a family among the eighteen?

A Yes, sir, there was one family.

Q Who were the members of that family?

A There was a man who tried to escape while he was being investigated by the Japanese soldiers. When he was captured

the Japanese soldiers took a woman from the group that was rounded up, together with some children, and they were taken to the place where the Japanese soldiers brought the man. They asked the woman if that man was her husband and the woman denied it. The Japanese soldiers asked the children, too, and the children denied that the man was their father.

While this woman and her children were taken back to the group, the Japanese soldiers took from the group one woman and asked her if that was the wife and the children of the man, and that woman answered yes. Then the Japanese soldiers brought back again this woman and her children and they started beating the man with the children, and that woman was leaving down the road while some Japanese soldiers took hold of the children from the feet and struck the children on the bodies of the woman and man till the children died.

Q Then what did they do to the mother?

A They took her to the house that was burning and threw the bodies into the fire.

Q How did they kill the father?

A They beheaded the father and threw the bodies in the fire.

Q How did they kill the rest of the civilians at Ajuy?

A The other civilians were beheaded.

Q Did you know any of the Japanese that took part in this killing?

A Yes, sir.

Q Who were they?

A It was Captain Watanabe.

Q Did you recognize any others?

A No.

Q Did you know the victims, any of the victims?

A No.

Q I show you a photograph which has been admitted into evidence as Prosecution's Exhibit No. 5 and ask you to identify, if you can, the person pictured thereon.

A Yes, sir.

Q Who is that?

A It's Otsuka.

Q I show you a photograph which has been admitted into evidence as Prosecution's Exhibit No. 9 and ask you if you can identify the person pictured thereon.

A Matsuzaki.

Q I show you a photograph which has been admitted into evidence as Prosecution's Exhibit No. 10 and ask you if you can identify the person photographed thereon.

A This is Shin.

Q Were these pictures the Otsuka, Matsuzaki, and Shin whom you have referred to as being present on the expedition?

A Yes, sir.

Q I don't recall asking you: Did you recognize the Japanese who took part in the killing of the Balleza family?

A Yes.

Q Who was that?

A Watanabe, Otsuka, and Hirata, and other Japanese officers whom I don't know.

Q You have referred to a Captain Watanabe. Was he referred to as Captain Kengo Watanabe or Major Kengo Watanabe?

COLONEL HAMBY: The witness did not understand your question.

Q You have referred to a Captain Watanabe. Did you know his first name?

A No.

Q Did you ever hear him called by his first name?

A No.

Q Did you ever hear him referred to as Major Watanabe?

A No.

LIEUTENANT MURPHY: You may ask.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Is it correct that you left Iloilo on September 10 and about seven hours later on the same day arrived in Passi?

A Yes, sir.

Q Then you left Passi and went to Lungao, is that right?

A Yes, sir.

Q Where is that barrio of Lungao in respect to the barrio of Passi?

A It's about one kilometer from the town of Passi.

Q What day was that?

A That was the next day after we arrived in Passi.

Q That would be September 11th, is that correct?

A Yes, sir.

Q Then where did you go from Lungao, to what barrio?

A Salngan.

Q How far is it from the barrio Lungao?

A I can't say exactly.

Q Is it between the barrio of Lungao and the barrio of Jimonoa?

A Yes.

Q What day, then, did you arrive at the barrio of Jimonoa?

A About the 17th of September.

Q How far is it in kilometers from Lungao to Jimonoa?

A I can't tell the distance because I was not used to that place. We only went that time.

Q Could you give us an estimate in kilometers over the route that you took?

A (No response.)

Q Will you tell us, to the best of your ability, how far in kilometers it was between those two barrios?

A It is about 10 kilometers.

Q Did you leave there, then, on September 17?

A Yes.

Q What was the next barrio you visited?

A From where, sir?

Q From Jimomoa.

A We went to Nueva Invencion.

Q How far is it between those two barrios, the barrio of Jimomoa and the barrio of Nueva Invencion?

A About 12 kilometers.

Q What day did you arrive in the barrio of Nueva Invencion?

A About the 19th of September.

Q Did you go on from the barrio of Nueva Invencion to Ajuy on the 19th?

A Yes, sir.

Q When did you leave Ajuy by motor barge and go back to Iloilo

A September 21.

Q How long altogether did you work for the Japanese Army as a cargador?

A Almost two weeks.

Q Was that the two weeks starting September 10 and ending on the 21st?

A Yes, sir.

Q Did you ever work for them at any other time?

A No.

Q Did all of the killings which you have testified about in these barrios, then, take place between the two dates of September 10th and September 19th?

A Yes, sir.

Q On that expedition of some 300 Japanese soldiers was Captain Kengo Watanabe the commanding officer of that expedition?

A All I know was that there was a Captain Watanabe.

Q Do you know whether or not he was in charge of these Japanese?

A In our group he was the one who was giving orders.

Q He was the one who gave the orders?

A Yes.

Q Do you know whether or not Otsuka took his orders from Captain Watanabe?

A Not always.

Q Did he sometimes?

A Yes, sir.

Q Would that same answer apply to Matsuzaki and Warrant Officer Shin?

A Yes, sir.

Q And to the Sergeant Hirata?

A Yes.

Q I hand you Prosecution's Exhibit No. 6 and ask you to state, if you know, who that is.

A No.

Q Did you ever see that man in that expedition at any time?

A No, I did not see him.

Q Did you ever see him in Ajuy at any time on the 19th of September?

A No.

LIEUTENANT MC CULLOUGH: I wish at this time to call the Commission's attention to the fact that the Prosecution's Exhibit No. 6 is a picture of Colonel Watanabe and that of a Captain Watanabe who has been referred to.

That is all the cross-examination.

REDIRECT EXAMINATION

BY LIEUTENANT MURPHY:

Q Did you act as anyone's personal cargador during the expedition?

A Yes, sir.

Q Whom did you work for?

A Otsuka.

Q So you kept pretty close to Otsuka and you didn't get around the entire expedition did you?

A Yes, sir.

Q Did you notice if any of the victims whom you saw executed received a court-martial trial?

A No.

Q Were they all unarmed?

A Yes, they were.

LIEUTENANT MURPHY: That is all.

RECROSS EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Were any of the 500 Japanese soldiers that started out from Iloilo on that expedition on the 10th of September killed before they got back to their headquarters at Iloilo, to your knowledge.

A I can't understand that.

Q I believe you stated that there were approximately 500 soldiers who started out from Iloilo on this punitive expedition on September 10, is that correct?

A Yes, sir.

Q Do you know whether or not any of those soldiers were killed during that expedition?

A I don't know of any.

Q Did you see any Japanese soldiers killed at any time during that expedition?

A No.

COLONEL HAMBY: The witness may be excused.

(Witness excused.)

The Commission will take a short recess.

(Short recess.)

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: Subject to objection by the defense, and with the permission of the Commission, we would like again to correct a word in the specifications. In Specifications 20 and 21 it should be "barrio J-I-M-O-M-O-A."

COLONEL HAMBY: If there is no objection, it will be so corrected.

CAPTAIN YARD: Our next witness is Norberto Padora.

NORBERTO PADORA

a witness for the prosecution, was duly sworn and testified as follows through Interpreters Villaluz, Geneves and Lagdameo:

LIEUTENANT MURPHY: This witness will testify as to the alleged atrocities in specifications numbered 23, 24, 25, and 26.

DIRECT EXAMINATION

BY LIEUTENANT MURPHY:

Q Will you kindly state your name.

A Norberto Padora

Q What is your age.

A 46.

Q What is your nationality?

A Filipino.

Q What is your present address?

A Barrio Jimomoa.

Q Is that near Passi, Iloilo, in the Island of Panay?

A Yes.

Q What is your occupation?

A Farming.

Q Were you ever rounded up by members of the Imperial Japanese Army?

A Yes.

Q What was the approximate date that you were apprehended?

A What?

Q Can you state the month of your apprehension?

A Yes.

Q When was that?

A September.

Q In what year?

A 1943.

Q And where were you apprehended?

A In the forest.

Q Near what barrio?

A Just between Madarag and Jimomoa.

Q How long were you held by the Japanese?

A Twenty-eight days.

Q During the time that you were held by the Japanese did you go on an expedition with them?

A Yes.

Q Where did you join the Japanese expedition?

A September, maybe on the 11th.

Q That is when you joined the Japanese expedition?

A Yes.

Q And in what barrio did you join the Japanese expedition?

A Madarag, barrio San Rafael.

LIEUTENANT MURPHY: He is again naming the barrios through which the expedition went. I will rephrase the question.

Q Where did you start?

A From Jimomoa.

Q Now where did the expedition go from barrio Jimomoa?

A Madarag.

Q Did you know any members of the Japanese patrol?

A Yes.

Q How many did you know?

A Three.

Q Who were they?

A They were Watanabe, Shin, and Matsuzaki.

Q ~~About~~ how many Japanese were there on the patrol?

A Maybe 200.

Q Did you witness any killing by the Japanese in Madarag?

A Yes.

Q How many did you see killed in the barrio of Madarag?

A Three.

Q What were their approximate ages?

A One, fifteen years old; the other, eighteen years old; and the third, twenty-five years old.

Q Were they men or women?

A Only men.

Q Did you know them?

A No.

Q How were they killed?

A They were hacked.

Q With what kind of an instrument?

A By a saber.

Q Did you see them captured?

A No.

Q Were they armed at the time they were executed?

A No.

Q Did you recognize any of the Japanese who took part in the killing of these three?

A Those were the only three I knew.

Q Did you know any of the Japanese who killed these three?

A Yes, they were Shin, Matsuzaki, and Watanabe.

Q Did Shin take part in the killing of the three?

A No, he only asked questions.

Q Did Watanabe and Matsuzaki actually kill the three persons?

A Yes.

Q From barrio Madarag where did the expedition go?

A To barrio San Rafael.

Q Did you witness any atrocities in the barrio of San Rafael?

A No.

Q Were there any civilians in that barrio?

A No.

Q From barrio San Rafael where did the expedition go?

A To barrio Nueva Invencion.

Q Did you witness any atrocities in this barrio?

A Yes.

Q Approximately how many Filipino civilians did you see killed there?

A According to my estimate, fifty.

Q Were men, women, and children included in the fifty?

A Yes.

Q Were the victims armed?

A No.

Q How were the fifty killed?

A Beheaded and stabbed.

Q What were they stabbed with?

A With bayonets.

Q How were the children killed?

A They were stabbed.

Q Did you recognize any of the Japanese who took part in the killing of the fifty?

A Those were the three.

Q What three?

A Matsuzaki, Shin, and Watanabe.

Q And you actually saw them killing some of the fifty victims?

A Yes.

Q From barrio Nueva Invencion where did the expedition proceed?

A To Ajuy, town of Ajuy.

Q On the way to Ajuy did you pass through a number of barrios?

A No.

Q On the way from Nueva Invencion did you see anyone killed?

A Yes.

Q Between barrio Nueva Invencion and Ajuy did you actually see people being killed?

A Yes.

Q About how many did you see being killed between barrio Nueva Invencion and Ajuy?

A According to my estimate, thirty.

Q Did you actually see these people killed or were they already dead when you saw their bodies?

A I only saw them dead when we passed by.

Q Then you did not see them killed?

A No.

Q Did you witness any atrocities in Ajuy?

A No.

Q From Ajuy where did the expedition go?

A Sara.

Q About when did you arrive at Sara?

A Maybe on the 18th of September.

Q Did you witness any atrocities in Sara?

A No.

Q From Sara where did the expedition go?

INTERPRETER LAGDAMEO: The question before the last, would the reporter repeat it?

(The requested question was read by the reporter.)

INTERPRETER LAGDAMEO: The answer is, "In Sara, no."

Q Did the expedition finally arrive at barrio Maligayligay?

A Yes.

Q Did you witness any atrocities committed by the Japanese soldiers at barrio Maligayligay?

A Yes.

Q About how many people were killed?

A Maybe one hundred.

Q How were these hundred people rounded up?

A They went after them in the forest and gathered them.

Q Were there men, women, and children included in the group?

A Yes.

Q Did you see them killed?

A Yes.

Q Were they unarmed Filipino civilians?

A No, they don't have them.

Q They don't have what?

A They do not have bolos.

Q Did they have guns?

A No.

Q Were they Filipinos?

A Yes.

Q How were they killed?

A They were beheaded and stabbed.

Q How were the children killed?

A They were stabbed by bayonets.

Q Did you recognize any of the Japanese who took part in the killing of about a hundred at barrio Maligayligay?

A Yes.

Q Who were these Japanese whom you recognized?

A Those were Shin, Matsuzaki, and Watanabe.

Q Did you know any of the victims?

A No.

LT. COLONEL CHASE: Before we go further, Lieutenant, will you clear up which one of the Watanabes this was, whether it was the colonel or the captain?

LIEUTENANT MURPHY: Yes, sir. I am not sure whether I can clear it up by asking him the rank of Watanabe but I believe I can clear it up by showing him a picture of one of the exhibits.

Q I show you a photograph which has been marked Prosecution's Exhibit No. 6 and ask you if you can identify the photograph of the person thereon.

A Watanabe.

Q Is that the Watanabe who was on the expedition with you?

A Yes.

Q Is that the Watanabe who took part in the killings that you have mentioned?

A Yes.

Q I show you a photograph which has been marked Prosecution's Exhibit No. 9 and ask you if you can identify the person pictured thereon.

A This is Matsuzaki.

Q And is this the Matsuzaki who was on the expedition with you and who you testified took part in the killing?

A Yes.

Q I now show you a photograph which has been marked Prosecution's Exhibit No. 10 and ask you if you can identify

the person pictured thereon.

A Shin.

Q And is that the Shin who you have testified was on the expedition and took part in the killing?

A Yes.

Q From barrio Maligayligay where did the expedition proceed?

A At Paquan.

Q Did you witness any atrocities committed by the Japanese in barrio Paquan?

A Yes.

Q How many people did you see killed there?

A According to my estimate, thirty.

LIEUTENANT MURPHY: That is Specification 26, which alleges six.

Q Were there men, women, and children included in the group of thirty that you saw?

A Yes.

Q Were these people Filipinos?

A Filipino.

Q Were they armed?

A None.

Q How were they killed?

A They were hacked and beheaded.

Q How were the children killed?

A Stabbed with bayonets.

Q Did you know any of the victims?

A None.

Q Did you know any of the Japanese who took part in the killing of the thirty persons at Paquan?

A Those were the three that I know.

Q Who were those three?

A Shin, Matsuzaki, and Watanabe.

Q Those were the same three Japanese whom you have just identified on prosecution's exhibits numbered 6, 9, and 10?

A Yes.

Q What was the approximate date of the killings in Paquan?

A On or about September 23rd.

Q What year?

A 1943.

Q Did the expedition finally arrive at Estancia?

A Yes.

Q What happened to you in the barrio of Estancia?

A I ran away.

Q You mean you escaped from the Japanese?

A Yes.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Is it correct that you joined this expedition at Madarag on September 11, 1943?

A Yes.

Q Did you go to the barrio of San Rafael the same day, or the next day?

A The same day.

Q When did you go from the barrio of San Rafael to the barrio of Nueva Invencion?

A On the following morning.

Q Is that September 12?

A Yes.

Q When did you arrive in Ajuy?

A Maybe on 15 September.

Q Were there any Japanese in Ajuy when your party arrived?

A Yes.

Q How many?

A According to my estimate, two hundred.

Q How many Japanese were in your group?

A In my group just only six.

Q Who were those six?

A I did not know them.

Q Was Captain Watanabe with you in Ajuy?

A Yes.

Q Was Captain Watanabe with you in Nueva Invencion?

A Yes.

Q Was Captain Watanabe with you in San Rafael?

A Yes.

Q Was he also with you when you started out from Madarag on September 11?

A Yes.

Q I hand you Prosecution's Exhibit No. 7 and ask you to state if that is Captain Watanabe that you are referring to.

A No.

LIEUTENANT MURPHY: If it please the Commission, I stayed away from calling Watanabe by name because I was well aware of the fact that the witness would probably not be in a position to know whether he was a captain or a colonel. Now, defense is taking advantage of that fact by referring to this Watanabe as Captain Watanabe. The witness has identified the Watanabe who

was on the expedition as being the Colonel Watanabe.

COLONEL HAMBY: Defense may proceed.

LIEUTENANT MURPHY: And could the record show, then, whose picture that was that you showed the witness?

LIEUTENANT MC CULLOUGH: Prosecution's Exhibit No. 7 was Lieutenant Toshimi Kumai. It has nothing to do with the expedition. I am merely testing the credibility of this witness through the identification.

Q I hand you Prosecution's Exhibit No. 6 and ask you to state who that is.

A Watanabe.

Q Are you positive that that is the Watanabe that you have been speaking about?

A Yes.

Q Is that the Watanabe that you traveled with from September 11th until you escaped from the Japanese near Estancia?

A Yes.

Q After you left Ajuy how long was it before you arrived in Sara?

A Maybe from Ajuy to Sara it took us one day to walk.

Q When, then, did you arrive in Sara?

A I cannot remember the date.

Q Was it on the 17th or 18th of September?

A Maybe 18 of September.

Q When did you arrive at the barrio of Maligayligay?

CAPTAIN YARD: Pardon me. Will you read back the last answer?

(The last answer was read by the reporter.)

Q When did you arrive at the barrio of Maligayligay?

A On 19 September.

Q Was Colonel Watanabe, whom you have identified in Exhibit 6 which I again show you, with you at that time? Was he with you in the barrio of Maligayligay?

A Yes.

Q When you went from the barrio of Maligayligay you went to the barrio of Paquan, is that correct?

A Yes.

Q And when did you arrive there?

A Maybe on 23 September.

Q Was the Watanabe that you have identified in Exhibit No. 6 with you in the barrio of Paquan?

A Yes.

Q When did you leave the barrio of Paquan to go to Estancia?

A That, the same day.

Q Was it then on the 23rd of September that you escaped and ran into the mountains?

A No, I escaped on the 28th of September at Estancia.

Q Then do I understand you correctly to say that you went to the barrio of Estancia on the 23rd and escaped on the 28th; is that correct?

A Yes.

Q Was the Colonel Watanabe that you have identified here in Exhibit No. 6 in Estancia just before you escaped?

A Yes, we were together.

Q I hand you Prosecution's Exhibit No. 3 and ask you to state if you know who that is.

A I do not know.

Q Did you ever see the man on that expedition at any time in this picture?

A I did not see him; I do not know him.

Q What work did you do with this expedition?

A When I was brought with the Japanese?

Q Yes.

A Carrying things on my shoulder.

Q Were you then employed as a cargador with the Japanese Army?

A Yes.

Q Who was your superior?

A I did not know him.

Q Was it any of the men that you have identified by their pictures?

A No.

Q Were you ever a member of the guerrilla organization?

A No.

Q Did you ever work with them at any time?

A No.

Q Have you ever seen the Japanese officer that is standing here beside me now any time during the Japanese occupation of the Island of Panay?

A No.

LIEUTENANT MC CULLOUGH: Let the record show that the man I referred to is General Kono.

That is all the cross-examination we have.

CAPTAIN YARD: We have no further questions.

COLONEL HAMBY: Questions by the Commission?

There appear to be none.

The witness is excused.

(Witness excused.)

COLONEL HAMBY: The Commission is in session.

DELMACIO AGRABANTE

a witness for the prosecution, was duly sworn and testified as follows through Interpreters Genoves, Villaluz and Lagdameo:

LIEUTENANT MURPHY: This witness will testify as to the alleged atrocities in specifications numbered 21, 23, 27, and 28.

DIRECT EXAMINATION

BY LIEUTENANT MURPHY:

Q Will you please state your name?

A Delmacio Agrabante.

Q What is your age?

A Thirty.

Q And your nationality?

A Filipino.

Q What is your present address?

A Passi.

Q Is that in the province of Iloilo, Panay Island?

A Yes.

Q What is your occupation?

A Carpenter.

Q Were you ever apprehended by members of the Japanese Army?

A Yes.

Q When was this?

A Eleventh of September.

Q In what year?

A 1943.

Q Where were you apprehended?

A Barrio Caamutan.

Q Is that barrio near Passi?

A Yes.

Q After you were apprehended did you accompany the Japanese or an expedition?

A Yes.

Q What were your duties on that expedition?

A I was carrying their burdens.

Q Approximately how many Japanese were on the expedition?

A More or less 300 Japanese.

Q Did you recognize any members of the Japanese patrol?

A When I was caught I don't know their names, but a few days later on I knew their names.

Q How did you learn the names of certain Japanese members of that patrol?

A I was told by some of my companions.

Q Will you name the Japanese whom you learned were on the patrol?

A Captain Watanabe, Otsuka, Colonel Tozuka, Matsuzaki, Fujii.

Q Did you see Colonel Watanabe on the patrol?

A Yes.

Q Where were you taken when you were first captured?

A To barrio Jimomoa.

Q Did you join the Japanese expedition there?

A Yes.

Q And then where did the expedition proceed.

A Barrio Madarag.

Q Did you witness any executions in the barrio of Jimomoa?

A Yes.

Q How many people did you see killed by the Japanese in Jimomoa?

A More or less seven.

Q Did you know any of these victims?

A I don't know their names.

Q Did you witness any executions?in the barrio of Madarag?

A Yes, I saw.

Q How many did you see killed in the barrio of Madarag?

A Two.

Q Were these two persons young?

A Yes, they wereyoung.

Q Were they men?

A Yes, men.

Q What were their approximate ages?

A One is approximately 15 to 16 and the other one was about 20.

Q Could you see the victims very well?

A Yes, very well.

Q Did you recognize any of the Japanese who took part in the execution of these two young men?

A No.

Q Who appeared to be in command of your part of the expedition?

A Watanabe.

Q Was that Colonel or Captain Watanabe?

A I heard Colonel Watanabe.

Q I show you a photograph marked Prosecution's Exhibit No. 6 and ask you whose picture is represented thereon?

A Colonel Watanabe.

Q Is that the Watanabe who was in charge of the expedition which you were on?

A Yes.

Q Did you ever see Colonel Watanabe give orders to any of the Japanese on the patrol?

A Yes.

Q Who did you see him give orders to?

A He ordered his men; among then was Otsuka.

Q I show you a photograph marked Prosecution's Exhibit No. 5 and ask you to name the person pictured thereon?

A Otsuka.

Q Is that the Otsuka whom you have just testified took orders from Colonel Watanabe?

A Yes.

Q From the barrio of Madarag, where did the expedition go?

A Barrio San Rafael.

Q Did you witness any atrocities in the barrio of San Rafael?

A None.

Q From barrio San Rafael where did the expedition go?

A Barrio Buncal.

Q Was barrio Buncal near barrio Jinomoa?

A Yes.

Q Did you witness any atrocities by the Japanese in the barrio of Buncal?

A Yes, I saw.

Q What did you see?

A I saw people beheaded.

Q By whom.

A Otsuka and some other Japanese.

Q Approximately how many did you see killed at the barrio of Buncal, near the barrio of Jimonoa?

A Approximately 40.

Q Did you recognize any of the victims?

A I know Genero Balleza.

Q Did you see him and his family killed?

A Yes.

Q And how were they killed?

A They were all beheaded.

Q Were some of the 40 bayoneted and shot?

A Yes.

Q Where did the expedition go after leaving barrio Buncal?

A The expedition went to Ajuy.

Q On the way to Ajuy, did you witness the execution of any unarmed Filipino civilians.

A Yes, I saw.

Q How many people did you see killed near Ajuy?

A More or less 30.

Q Did you recognize any of the Japanese who took part in the killing of the 30.

A Yes, I know.

Q Who did you recognize taking part in the killing of the 30?

A One of them was Otsuka; he had other companions.

Q Did he appear to receive orders from anyone to kill these 30 people?

A Yes, somebody commanded him.

Q Did you recognize the person who commanded him to kill the people?

A Yes, I know.

Q Who was it?

A Watanabe was his name.

Q I show you again Prosecution's Exhibit No. 6 and ask you if this is the Watanabe who commended Otsuka to kill the 30 people near Ajuy?

A Yes, he is the one.

Q Were there children among these 30 people?

A Yes, there were children.

Q How were they killed?

A Some of the children were hit against the body of their mothers and the others were bayoneted.

LIEUTENANT MURPHY: (To interpreter): Can't we get a better explanation of what he means by "children getting hit against the bodies of their mothers"?

(Discussion ensued between interpreter and witness.)

THE WITNESS: (Through interpreter): They held the feet of the children and strike against the bodies of the mothers.

Q Had the mothers been dead at the time the babies were bashed against them?

A The mother was already hacked to death.

Q From Ajuy where did the expedition go?

A Sara.

Q Do you remember the approximate date of the arrival of the expedition to Sara?

A I cannot remember.

Q On the way to Sara did you see the killing of any unarmed civilian Filipinos?

A Yes.

Q How many people did you see killed on the way from Ajuy to Sara?

A Two.

Q Did you recognize the Japanese who killed these two people?

A Yes, I know.

Q From Sara where did the expedition go?

A It went towards the mountains of Capiz.

Q What were the Japanese doing in the mountains of Capiz?

A They also beheaded several Filipinos.

Q Were they searching for guerrillas?

A Yes, they were also searching for guerrillas.

Q Did the expedition return to Sara?

A Yes, it went back.

Q Then did you proceed to the barrio of San Dionisio?

A Yes.

Q About when did you arrive there?

A About 25th or 26th.

Q Did you escape from the Japanese in this barrio?

A Yes, at San Dionisio.

Q And what was the date of your escape?

A On the 27th.

Q About how many days were you held by the Japanese?

A More or less, 27 days.

Q You were captured on what day?

A About September 11, 1943.

Q You were with them 27 days?

A Including the number of days when I went home.

Q Did you notice while you were on the expedition that the Japanese split up into groups and went out on patrols?

A They were divided and went in separate directions.

Q Did you usually accompany the Otsuka patrol?

A Yes

Q When the patrols came together, who appeared to be in command of them?

A Watanabe appeared to be the leader.

Q I now show you Prosecution's Exhibit No. 3 and ask you if you can identify the person in the photograph thereon.

A Colonel Tozuka.

Q He was on the expedition with you?

A Yes.

A I show you Prosecution's Exhibit No. 10 and ask you if you can identify the person pictured thereon.

A I don't know his name.

Q I show you Prosecution's Exhibit No. 9 and ask you if you can identify the person's picture thereon.

A Matsuzaki.

Q You also said that Shin was on the expedition with you, is that right?

A No.

Q Shin was never on the expedition with you?

A I don't know because I don't know his name.

Q I show you what has been marked as Prosecution's Exhibit No. 4 and ask you if you can identify the person pictured thereon.

A Fujii.

Q Was Fujii on the expedition with you?

A Yes, I saw him.

LIEUTENANT MURPHY: That's all. You may cross-examine.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q How far is the barrio Caamutan from the barrio of Madarag?

A More or less 8 kilometers.

Q After you were captured on September 11 in barrio Caamutan, did you go to the barrio of Madarag the same day?

A Not yet.

Q When, then, did you go?

A On the following morning, yet.

Q That was on September 12, is that correct?

A Yes.

Q How long did you stay in the barrio of Madarag?

A We only passed through.

Q Did you go on to the barrio of San Rafael the same day?

A Yes.

Q When did you leave the barrio of San Rafael going to the barrio of Buncal?

A We slept at barrio San Rafael and on the following morning we proceeded to barrio Buncal.

Q How far is it from barrio Madarag to the barrio of San Rafael?

A More or less 6 kilometers.

Q How far is it from barrio San Rafael to barrio Buncal?

A More or less 8 kilometers.

Q How long did you stay in barrio Buncal?

A We stayed about one week at barrio Buncal.

Q Then would you say that you were there between the 13th and 20th of September 1943?

A I cannot remember if those were the exact dates.

Q When did you arrive at the barrio of Jimomoa?

A Right on the same date when I was captured.

Q Then were you in the barrio of Jimomoa on September 11th?

A Yes.

Q How far is the barrio Jimomoa from the barrio of Buncal?

A More or less one and a half kilometers.

Q And after you had stayed a week, or nearly a week, in the barrio of Buncal, did you then go to Ajuy?

A Yes.

Q Do you remember the date that you were in Ajuy?

A I cannot remember the dates.

Q Was it on or about September 20, 1943?

A I am sorry, I cannot remember.

Q How long did it take you to get from barrio Buncal to Ajuy?

A From Buncal we slept on the way before we reached Ajuy.

Q Did you arrive there the next day?

A Yes.

Q How long were you in Ajuy?

A We slept at Ajuy one evening and proceeded the following morning.

Q How long did it take you to get from Ajuy to Sara?

A It did not take us a very long time. We started about 5 o'clock at Ajuy and we arrived at Sara about 9.

Q Was that in the morning or in the evening?

A In the morning.

Q How long then did you stay in Sara?

A We just passed through.

Q How far is Mt. Capiz from Sara?

A It's quite far.

Q Will you estimate the number of kilometers.

A More or less 20 kilometers.

Q How long then did you stay in the vicinity of Mt. Capiz before you returned to Sara?

A We stayed in the mountains of Capiz about a week.

Q After you returned to Sara how long were you there?

A We slept for one evening at Sara and the following morning we proceeded to San Dionisio.

Q Do you recall when you arrived at San Dionisio?

A I cannot remember but I can somehow estimate.

Q Would you make your best estimate?

A About twenty-sixth.

Q At that time you were paid off by the Japanese Army and left, is that correct?

A No.

Q What was the fact?

A I escaped from the Japanese.

Q I show you Prosecution's Exhibit 4 and ask you to state if this man was with you all of the time from the date you were captured until you were released or escaped.

A Yes, he was with me.

Q All of the time?

A Once in awhile I see him.

Q Did you see him just before you escaped?

A No.

Q How long had it been since you last saw him?

A I cannot definitely tell you the date. Once in awhile I can see because I don't always go with him.

Q How many times did you see this man here shown on Prosecution's Exhibit No. 3?

A I always see him.

Q Did you see him every day?

A There are times when I cannot see him, when I do not see him.

Q I show you Prosecution's Exhibit No. 6 and ask you to state if you saw him every day.

A Yes.

Q Is the same thing true with the person shown in Prosecution's Exhibit 9?

A I always see this fellow.

Q Is the same thing true as shown on Prosecution's Exhibit 10?

A No.

Q Did you ever see him after?

A I never saw him; I don't know him.

Q How about the man shown in Prosecution's Exhibit No. 4?

A I see him always.

Q And did you know Norberto Padora who testified in this proceeding?

A Yes, I know him.

Q Did you see him on that expedition?

A We don't go together but every now and then we see each other.

Q Did you ever see him on that expedition?

A Yes, I saw him.

Q Where?

A I saw him at barrio Buncal.

Q Did you see him any place else?

A No more.

Q Do you know Nonito Tubungbanwa who testified in this hearing today?

A Yes, I know him.

Q Did you ever see him on that expedition?

A Yes, we were together.

Q Were you together at all times?

A Before he escaped we were together but when he escaped I was alone.

Q Did you go to Paquan with him?

A No.

Q After you were captured on September 11th, where did you first see him?

A Do you mean Tubungbanwa?

Q Yes.

A After my capture I immediately saw him.

Q Was he in the barrio of Madarag when you were there?

A Yes.

Q Did you seehim again at Nueva Invencion?

A No.

Q Did you see him at San Rafael?

A Yes, we were together.

Q Did you see him in Ajuy?

A Yes.

Q Did you see him at Sara?

A No, he escaped at Ajuy when we arrived at Ajuy.

Q After you had been up to the mountain and returned to Sara, did you see him again there at that time?

A Tubungbanwa?

Q Yes.

A No.

Q When was the next time you did see him?

A Only now when we are together again.

Q Did you ever work with the guerrilla forces at any time during the Japanese occupation?

A No.

Q I ask you if at any time during the Japanese occupation you have seen the Japanese officer standing here beside me.

A No, only now do I see him.

LIEUTENANT MC CULLOUGH: Let the record show that the man I referred to is General Kono. That's all.

CAPTAIN YARD: We have no further questions, sir.

COLONEL HAMBY: Questions by the Commission?

There appear to be none.

The witness is excused.

(Witness excused.)

CAPTAIN YARD: Sir, in view of the fact that our next witness' testimony will cover some five specifications, the fact that we would like to have it all given at one time, we request that we recess until 8:30 tomorrow morning.

COLONEL HAMBY: The Commission will recess until 0830 tomorrow morning.

(The Commission thereupon adjourned at 1610 hours, 17 April 1946.)

Prosecution Exh. No. 16
USA vs. Takeshi Kono
17 April 1946

(2055)

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Armed Forces
Western Pacific

UNITED STATES OF AMERICA	
vs	
TAKESHI KONO	PUBLIC TRIAL

VOLUME IV

PAGES 322 TO 448

MANILA, P. I.

DATE: 18 April 1946

COPY NO.: 3

CERTIFICATION

This certifies that this volume is a part of the proceedings of the Military Commission appointed by Paragraph 21, Special Orders No. 85, Headquarters, United States Army Forces, Western Pacific, dated 12 April 1946, in the trial of the case of the United States of America v. Takeshi Kono.

Dated 7 May 1946

W. R. Hamby

WILLIAM R. HAMBY
Colonel, CAV
President of Commission

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
vs	)	
	)	PUBLIC TRIAL
TAKESHI KONO	)	
	)	

Court No. 1
High Commissioner's Residence
Manila, P. I.
18 April 1946

Met, pursuant to adjournment, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL WILLIAM R. HAMBY, CAV, President and Law Member
COLONEL JOHN L. GOFF, CAC
COLONEL JOSEPH H. WARREN, INF
LIEUTENANT COLONEL JOHN A. CHASE, (CMP)
CAPTAIN JACK ELLINGSON, CMP

APPEARANCES:

FOR THE PROSECUTION:

(AS PREVIOUSLY NOTED.)

FOR THE DEFENSE:

(AS PREVIOUSLY NOTED.)

INTERPRETERS FOR THE COMMISSION

(AS PREVIOUSLY NOTED.)

REPORTERS FOR THE COMMISSION:

ARNOLD COHEN
WILLIAM COHEN

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WITNESSES

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P R O C E E D I N G S

The Commission convened, pursuant to adjournment, at 0840 hours, 18 April 1946, at Courtroom No. 1, High Commissioner's Residence, P. I.

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: Sir, let the record show that the following members of the Commission are present: Colonel Hamby, Colonel Warren, Lieutenant Colonel Chase, and Captain Ellingson; that the accused together with his defense counsel and personal interpreter and members of the prosecution are present.

Prosecution's next witness is Felizberto Grijalvo. He speaks English.

FELIZBERTO GRIJALVO

a witness for the prosecution, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY CAPTAIN YARD:

Q Will you state your name.

A Felizberto Grijalvo.

Q What is your age?

A Thirty-two years old.

Q Your nationality?

A Filipino.

Q Where do you presently reside?

A Arevalo, city of Iloilo, Philippines.

Q In October 1943, were you taken by the Japanese?

A Yes, sir.

Q And where were you living at that time?

A I was in the provincial jail in the custody of the Japanese Military Police.

Q Prior to the time that you had been taken there by the military police, where were you living?

A I was within the territorial jurisdiction of the municipality of Guimbal in the headquarters of the 3rd Battalion, 63rd Infantry, Guerrilla.

Q Did the Japanese force you to work for them?

A Yes, sir.

Q What type of work were you forced to do?

A I was made a cargador.

Q And what do you mean by "cargador"?

A I was made to carry anything that would be brought along with them in their punitive expedition.

Q And did you go on such a punitive expedition with the Japanese?

A Yes, sir.

Q And where did you go?

A We went -- the first place we went was in the municipality of Batan, province of Capiz.

CAPTAIN YARD: May it please the Commission, the testimony of the witness now will relate to Specifications 29, 30, 31, 32 and 33; from 29 to 33 inclusive.

Q Batan is in the province of Capiz?

A Yes, sir.

Q How did you go from Iloilo to Batan?

A By motor launch.

Q How many Japanese soldiers approximately went on this expedition?

A About five hundred,more or less.

Q And how many launches were used to transport these soldiers?

A Three launches.

Q And who supervised the loading of the launches?

A Colonel Tozuka.

Q I show you a photograph that has been identified as Prosecution's Exhibit No. 3 and ask you to state whose picture it is.

A The picture of Colonel Tozuka.

Q And is that the officer who supervised the loading of the launches?

A Yes, sir.

Q Did Colonel Tozuka accompany this expedition to Batan?

A Yes, sir.

Q Did he go in your launch?

A We went in the same launch.

Q In the same launch. Did you recognize any of the other Japanese on the launch that went with you to Batan?

A I could not remember.

Q When did you arrive approximately,that is, in Batan?

A I arrived in Batan on October 18 in the afternoon about six o'clock.

Q And when you arrived at Batan had the other launches arrived before you or were you the first one?

A We were about the second launch.

Q And what did you observe when you went into Batan?

A When we went into Batan I saw Japanese soldiers rounding up civilians.

Q Approximately how many civilians did they round up?

A They rounded up in all about one hundred civilians, more or less.

Q Did you recognize any of the Japanese who were rounding the civilians up?

A I did not recognize. They were soldiers.

Q And what was done after the civilians were rounded up?

A They were assembled together along a certain street about the middle of the town.

Q That is the town of Batan?

A In the town of Batan.

Q Of these citizens, did they include men, women, and children?

A They were mostly women, some few men who are aged and sickly, some children; and included in the group were two Roman Catholic priests.

Q Two Roman Catholic priests. After they were segregated together in the center of the town what was done with them.

A They were questioned or investigated.

Q By whom were they questioned or investigated?

A By Otsuka, Kuwano, Matsuzaki, and several other Japanese whom I did not recognize.

Q I show you Prosecution's Exhibit 5, being a photograph, and ask you to state whose picture that is if you can.

A This is a picture of Otsuka.

Q And was that the Otsuka who was conducting the investigation there?

A Yes.

Q I show you Prosecution's Exhibit No. 9, being a photograph, and ask you to state whose picture that is.

A It's Matsuzaki.

Q And is that the Matsuzaki who was also questioning the people there?

A Yes.

Q I show you Prosecution's Exhibit No. 11, being a photograph, and ask you to state whose picture that is, if you can.

A Kuwano.

Q And is that the Kuwano who was investigating people there also.

A Yes, sir.

Q At the time the investigation was being carried on did you see Colonel Tozuka?

A Yes, sir.

Q Where was he?

A He used to supervise the investigation; he used to walk from one place to another within the place where the investigation was being conducted.

Q What methods were used with these civilians while they were being investigated?

A They were tortured, severely beaten.

Q How were they tortured?

A They were hit at the back by a wooden club.

Q Did they use any other means of torture on them?

A I saw one woman who was held by Matsuzaki by the hand and was made to run through the flames, through fire.

Q Approximately how old was that woman?

A She was about 50 years old, 50 or 55 years old.

Q At the time the investigation was being conducted did you see any dead person or persons?

A Yes, sir.

Q Will you tell us about that?

A I saw a dead person lying in the street and in the course of the investigation the Japanese pointed out that dead civilian and told those other civilians that if they do not tell the truth in the course of the investigation they will meet similar fate.

Q How long did this investigation continue?

A The investigation lasted for about four hours from approximately seven o'clock in the evening until about eleven o'clock the same evening.

Q And then what was done with these people who were being investigated?

A After their investigation they were all imprisoned under a house along the side of the road.

Q Is that near where they had been investigated?

A It was very near the place where they had been investigated.

Q Did you leave Batan?

A I beg your pardon?

Q When did you leave Batan.

A We left Batan the following morning.

Q Prior to the time that you left Batan what was done with the civilians?

A Before we left Batan all those civilians were killed.

Q Where were they killed?

A They were killed under the house opposite, opposite the house wherein they were imprisoned.

Q How were they killed?

A They were beheaded with samurai swords.

Q By whom were they killed?

A By Kuwano and Otsuka.

Q Did you see anyone other than Kuwano or Otsuka behead any of the people?

A I have not seen.

Q Where were you while the executions were being carried out?

A I was in the street just outside the house.

Q Did you yourself see these people being beheaded?

A Yes, sir, I saw it personally.

Q How did they execute the children?

A They struck them with the point of their samurai swords.

Q Do you know what was done with the bodies after they were killed?

A After they were killed their bodies were just left behind. Then the Japanese ordered us to gather the "bamboo walls" and covered their bodies with it.

Q Did you assist in covering the bodies?

A Yes, sir, we were ordered by the Japanese.

Q Approximately how many persons were killed by Kuwano and Otsuka here in Batan?

A All those persons who were rounded up, numbering more than about one hundred, more or less.

COLONEL CHASE: Did I understand correctly, one hundred in all?

CAPTAIN YARD: Yes, one hundred more or less, he said.

Q During the time the executions were being carried out, did you see Colonel Tozuka?

A Yes, sir.

Q Where was he?

A He was also outside the house, just in the street.

Q Do you know whether or not these people were given a trial prior to the time that they were killed?

A They were asked questions. I don't consider it a trial.

Q About what time of the day did the executions take place?

A About four to five o'clock in the morning.

Q Do you know any reason why these people were killed?

A So far, I do not know.

Q Did you see any of them with arms?

A I beg your pardon?

CAPTAIN YARD: Strike the question.

Q Did you see anyone with a gun or other weapon?

A I cannot understand the question.

Q Did you see any of these civilians who were killed who had a gun or a weapon?

A No.

Q When did you leave Batan?

A We left Batan on October 19, early in the morning, about five o'clock.

Q That was after the killings took place?

A After the executions took place.

Q And where did you go?

A We went to the municipality of Altavas, Province of Capiz.

Q What happened when you arrived at Altavas?

A While we were along the way, when the main body stopped, patrols were sent out in many directions and in a few minutes the patrols returned bringing along with them captured civilians.

Q What was done with these civilians?

A The civilians, they were investigated a short time. After the investigation they were all killed.

Q And when you say "investigated," do you mean questioned?

A They were questioned.

Q Included in this group of civilians, were there men, women, and children?

A There were mostly women, and some old men.

Q By whom were they questioned?

A By Kuwano, Otsuka, Matsuzaki, and several others whom I do not recognize.

Q And Kuwano, Otsuka, and Matsuzaki that you have mentioned are the same whose pictures you just previously identified, is that right?

A Yes, sir.

Q About how many were in this group at Altavas?

A About thirty to forty civilians.

Q After they were questioned what was done with them?

A They were executed, they were killed.

Q By whom?

A By Kuwano and Otsuka.

Q Did you see anyone else participate in the killing of these civilians?

A I have not seen.

Q Where were you when the killings took place?

A I was just in the middle of the street.

Q How far away from where the killing was done?

A Approximately ten meters, more or less.

Q Approximately ten meters. What method was used to kill these people?

A They were beheaded with their samurai swords.

Q What was done with the bodies?

A Their bodies were left behind them.

Q Did you see the bodies after the killing took place.

A Yes, sir.

Q Approximately how many people were killed?

A Thirty to forty were killed.

Q In other words, the group --

A All the group who were captured were killed.

CAPTAIN YARD: That pertains to Specification 30.

Q At the time these people were executed did you see Colonel Tuzuka?

A Yes, sir.

Q Where was he?

A He was about approximately 20 meters from the scene of the execution. Most of the time he used to stay at the middle of the group, usually riding on a horse.

COLONEL CHASE: What was that?

(The last answer was read by the reporter.)

Q When did you leave Altavas?

A We left Altavas that very same day.

Q Where did you go?

A We proceeded to the municipality of Balete, Province of Capiz, and stayed for a night along the way.

Q That is on the way to Balete you spent the night --

A We spent the night.

Q What happened when you got to Balete?

A When we reached Balete, Japanese rounded up several civilians. Those civilians mostly were women. They were all imprisoned together and some of them were inquired as to the whereabouts of their municipal mayor. Some of them were allowed to go on condition that they bring back with them the males. Those who were left were held as hostages with the condition that if the males would not surrender, all those civilians will be executed.

Q And what happened to this group?

A As far as I know, the following day the mayor surrendered and those people were spared.

Q They spared those women?

A They spared those women.

Q I neglected to ask you, did you know of any of the persons who were executed at Batan?

A I do not know any.

Q Did you know any of the persons who were executed at Altavas?

A I do not know any.

Q Did you know any of these persons who were gathered together at Balete?

A I do not know any.

Q Did they send out any patrols from Balete?

A Yes, sir.

Q And did you see these patrols return?

A In the afternoon of that same day a certain patrol arrived with a group of about 15 to 20 civilians, mostly old men.

Q Mostly old men?

A Mostly old men.

Q And what was done with these civilians?

A They were all killed.

Q Where were they killed?

A They were killed right in the place where we rested under the banana groves about 20 meters away from the road.

Q And this was at Balete?

A That was in Balete.

Q Who killed them?

A They were all killed by Otsuka.

Q Did anyone else participate in the killing?

A No.

Q What was done with the bodies?

A Immediately after the killing their body was just left on the spot where they were executed, But the following day the Japanese decided to stay for a certain number of days in the place, so they ordered the cargadors to carry along their bodies farther away, and covered them with cornstalks.

Q And did you assist in carrying these bodies away and covering them with cornstalks?

A I did not assist myself.

Q Did you see the bodies being carried away?

A No.

Q Did you know any of the victims in this killing?

A I do not know any.

Q On this trip from Iloilo to Batan did you see. Tomas Digohermano?

A Yes, sir.

Q Did you know him prior to the expedition?

A Yes, sir.

Q Was he present in Batan?

A Yes, sir.

Q Was he present at Altavas?

A Yes, sir.

Q Was he present at Balete?

A Yes, sir.

Q Do you know whether or not he accompanied the patrol from Balete?

A I do not know.

Q After this group of fifteen or twenty were brought in did you see any other civilians brought in to Balete?

A Yes, sir.

Q About how many?

A The following day a group of about twenty to thirty civilians, all men, were brought from Banga by the patrol that went to that place?

Q Banga?

A Banga.

Q And did you see at any other time civilians being returned to Balete?

A The day following I saw some other civilians who were also brought along by the patrol who returned from Banga.

Q In other words, you knew of two patrols that went from Balete to Banga, is that right?

A Maybe more than two.

Q All told, how many civilians were brought back from Banga?

A Approximately fifty to sixty.civilians.

Q Where were they held?

A They were held prisoners under a certain cottage along the roadside in the municipality of Balete.

Q These civilians that were brought back from Banga, were they questioned?

A Yes, sir.

Q By whom?

A By Kuwano, Otsuka, Matsuzaki, Watanabe, and several others.

Q When you speak of Watanabe,do you mean Captain Kengo Watanabe?

A I cannot exactly tell you but I just heard he was Watanabe; that was all I heard of him.

Q What methods were used in questioning these witnesses?

A I beg your pardon?

Q What methods were used in questioning these witnesses?

A In all the cases of questioning they were always accompanied by severe tortures.

Q And what do you mean by "severe tortures"?

A They were beaten hard at the back with a big wooden club.

Q Did you see any of this group burned in any way?

A I have not seen any.

Q How long did you stay in Balete?

A We stayed in Balete for approximately one week.

Q What was done with the civilians who had been brought from Banga?

A After about one week's stay all those prisoners from Banga were executed, they were killed.

CAPTAIN YARD: This is in connection with Specification 31.

Q That would be 50 to 60 people?

A About 50 to 60 people.

Q And they had already executed at Balete about how many?

A Prior to that execution they killed about 15 to 20.

Q How were these people executed?

A They were beheaded with Samurai swords.

Q By whom were they executed?

A By Kuwano and Otsuka.

Q That is the Kuwano and Otsuka whose photographs you have identified here?

A Yes, sir.

Q Did you know any of these persons who were killed?

A I do not know any.

Q What was done with their bodies?

A Their bodies were pushed into the river and were carried away by the water. About that time the river was overflooding its banks.

Q Where were these people killed?

A They were killed at the bank of the river.

Q And as they were killed what was done with the bodies?

A They were thrown into the water; they were pushed into the water.

Q Did you see any incident that was unusual that happened while these people were being killed?

A While those people were being killed they were brought out from that cottage wherein they were imprisoned one at a time. On one of the occasions a certain prisoner was ordered to sit down because the usual procedure is that before they are beheaded they are ordered to sit down, to squat. That prisoner, upon being ordered to squat, he jumped into the water.

Q What happened after he jumped into the water?

A After he jumped into the water I saw several Japanese firing at him, shooting him.

Q Do you know whether or not he was killed?

A I cannot exactly tell whether he was hit or not, or whether he was killed or not.

Q Were his hands free when he jumped into the water?

A He was manhandled, his hands were tied at the back.

Q What do you mean by "manhandled"?

A I mean when I say "manhandled," his two hands are tied together at the back.

Q Do you mean "manhandled" or manacled?

A Two hands tied together at the back.

Q Where did you go from Balete?

A From Balete we split into two groups: the first group, as far as I know, was under Captain Watanabe and the other group was under Colonel Tozuka. The group of Captain Watanabe left in the afternoon of the very same day of the execution while the group under Colonel Tozuka, the group that I went with, left the following day for the municipality of Libacao, Province of Capiz.

Q Did anything happen at Libacao?

A While we were at Libacao I happened to go along with one of these patrols to the surrounding barrios. In one of the incidents I saw an old man who was stabbed to death by an Interpreter Simoje. That group was under Kai; that patrol was under Kai.

Q From Libacao where did you go?

A From Libacao we went back to Banga.

Q To Banga?

A We went to Banga. Then from Banga we proceeded to Calibo; from Calibo we went to New Washington; and from New Washington we took a motor launch to Tablas Island, Province of Romblon.

LIEUTENANT MC CULLOUGH: You might make an arrangement so that the interpreters or someone can give us these names. This is going pretty fast now. We can't keep up with it.

CAPTAIN YARD: I'm sorry. I'll straighten it out.

Will the reporter read back the last answer.

(The last answer was read by the reporter.)

Q From Tablas Island did you go to a point near Despojols?

A Yes, sir.

Q While you were at Despojols what happened?

A At this place I was brought along in one of the patrols. That patrol was under Lieutenant Kumai. In that patrol I witnessed a very old man who was stabbed to death by Interpreter Simoje who was also with that patrol.

Q You went on a patrol from Despojols, which patrol was under the command of Lieutenant Kumai, and while you were on that patrol you saw an old man stabbed to death by the Japanese interpreter, Simoje.

A Yes.

Q Was Kumai present when this stabbing occurred?

A Yes, sir.

Q Will you tell what happened at that time?

A From that very place where that man was executed --

Q No, just a moment, please. Do you know why he was stabbed?

A I do not know the reason why.

Q Where was he when the patrol found him?

A He was in a small hut in the slope of the mountain.

Q In the where?

A He was in a small hut in the slope of the mountain.

Q What happened when the patrol went up to the hut?

A When the patrol went to that hut they found a couple, an old man and an old woman. That old man was killed and that old woman was spared.

Q Why did Simoje, the interpreter, kill the old man.

A I cannot exactly tell, but I heard Kumai talk in Japanese, and after talking in Japanese that Interpreter Simoje struck that old man with his native bolo.

Q I show you Prosecution's Exhibit 7, being a photograph, and ask you to state whose picture that is, if you can.

A Lieutenant Kumai.

Q Is that the Kumai who was in charge of the patrol concerning which you have just testified?

A Yes, sir.

CAPTAIN YARD: That related to Specification 32.

Q How many soldiers were on that patrol under Kumai?

A About 20 to 30 soldiers.

Q Where were you when the old man was killed?

A I was very near.

Q What was done with his body?

A It was just left behind; the body was left behind.

Q Did he appear to be dead?

A He appeared to be dead.

Q Did you witness any other incident on that patrol?

A I also saw one woman, about 30 years old. As she appears she was a mountain woman. She was captured by the soldiers of Kumai and was brought in front of Kumai. Upon being brought in front of Kumai the soldiers stripped off her clothes. Upon being stripped off, the soldiers handled her private parts and then Lieutenant Kumai talked again in Japanese. Right away the soldiers of Kumai bound her hand and foot and hung her with her head downward in a nearby blueberry tree. We left her, she was screaming, she was crying.

Q What was the weather at that time?

A The weather was raining.

Q Was it warm or cold?

A It was very cold because it was at the top of the mountain

Q When you left her was she still without her clothing?

A Yes, sir.

Q Was anyone around when she was captured?

A No other else but Japanese soldiers and myself.

Q When you left her was there any likelihood of anyone finding her?

A There is no possibility because at that time all the places were approximately visited by the Japanese and all the civilians ran down to the lowlands or to the towns, because if they were captured in the mountains there is a great liability that they will be killed.

Q Then do I understand that while Kumai was there her hands were bound in back of her, her feet were tied behind her, her hands and feet joined by rope, and then, in that position, she was hung face downward from a tree; is that correct?

A Yes, sir.

Q Was there anything unusual about that woman's physical condition?

A She was blind.

Q Blind.

A That was the reason, maybe, why she was unable to escape.

CAPTAIN YARD: Will you read back that last answer, please.

(The last answer was read by the reporter.)

Q While you were on this expedition did you witness any other killings?

A So far I have not witnessed any other killings. But in many instances, while we were walking, I saw several dead bodies.

Q But you don't know who killed them?

A I do not know who killed them. The possibility is that they were killed by Japanese. Several Japanese were ahead of us.

CAPTAIN YARD: The last testimony, concerning the blind woman, related to Specification No. 33.

Q Did you then return to Panay Island?

A Yes, sir.

Q Did you subsequently return to Iloilo?

A Yes, sir.

Q That's the City of Iloilo.

How did you go back to Iloilo?

A From Tablas Island we took a motor launch to New Washington, Province of Capiz; from New Washington we made still several patrols to the mountain of Malinao.

Q How do you spell that?

A M-a-l-i-n-a-o. And then from that place we went back to Calibo; from Calibo we walked to Numancia.

Q How do you spell that?

A N-u-m-a-n-c-i-a. From Numancia we proceeded to Macato.

Q How do you spell that?

A M-a-c-a-t-o. From Macato we went to Ibajay.

Q How do you spell that?

A I-b-a-j-a-y. And from Ibajay we took a mountain road to the municipality of Pandan, the Province of Antique; from Pandan we took a motor launch back to Iloilo.

CAPTAIN YARD (To Lieutenant McCullough): Do you have that?

LIEUTENANT MC CULLOUGH: No. We get lost at these towns here.

CAPTAIN YARD: Will the reporter read back the last answer, please.

(The last answer was read by the reporter.)

Q Did you at any time before returning to Iloilo join the rest of the expedition?

A Beg pardon, sir?

Q CAPTAIN YARD: Will you read the question.

(The last question was read by the reporter.)

A Yes, sir.

Q Where was that?

A That's still a part of the expedition. That part of the trip which we made from Tablas Island was still part of the expedition.

Q Did the group under Captain Watanabe join you?

A Yes, sir.

Q Where did you meet them again?

A We met them, first, at Libacao.

Q When you returned to Iloilo, then did the Watanabe and the Tozuka groups go back together?

A Well, it was quite a complicated expedition. Some of the groups separated; some joined together again. But the last part of the expedition wherein we went with, it was about a company only, and I cannot exactly tell who are the officers in charge there. Colonel Tozuka and Captain Watanabe were no longer with us.

Q They were no longer with you?

A They were no longer with us.

Q That's at the time you returned, Tozuka and Watanabe were not there?

A Yes.

Q While you were on this expedition were any Japanese soldiers ever killed?

A Never, not one as far as I know.

Q Were you ever fired upon by any civilians?

A Never.

Q In other words, this expedition never engaged in any combat; is that correct?

A Yes, sir.

Q That is from the time you left Iloilo until you returned to Iloilo?

A Yes, sir.

Q What happened after you got back to Iloilo?

A When we reached Iloilo we were just left alone, and then I myself went home.

Q You went home. Had you been told beforehand that on the return from the trip you would be released?

A We were told by one of the interpreters in the military police that if we could behave well -- that means we'll be obedient to them, we will be industrious during the expedition -- we will be released upon returning to Iloilo.

CAPTAIN YARD: You may cross-examine.

COLONEL HAMBY: The Commission will take a short recess.

(Short recess.)

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: I remind you that you are still under oath.

THE WITNESS: Yes, sir.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Is it correct that this punitive expedition left Iloilo on October 18, 1943, and landed at Batan several hours later the same day?

A No, sir.

Q When did they land?

A We left Iloilo on October 17, in the afternoón?

Q When did you arrive in Batan?

A We arrived in Batan on the following day, October 18, 1943, about 6 o'clock in the afternoon.

Q You left Batan on October 19 and went to Altavas, is that correct?

A Yes, sir.

Q When did you arrive in Altavas?

A Beg your pardon?

Q When did you arrive in Altavas?

A Arrived in Altavas in October 19, 9:00 o'clock in the morning.

Q In the morning?

A 9:00 o'clock.

Q When, then, did you arrive at Balete?

A I arrived at Balete on October 20.

Q Were you in any intermediate barrios between Altavas and Balete?

A I beg your pardon?

LIEUTENANT MC CULLOUGH: Will the reporter read the last question.

(The last question was read by the reporter.)

A Yes, sir.

Q What was the name of that barrio or city?

A I do not know the name.

Q Do you know whether or not it was Talon?

A I do not know.

Q Was the expedition split on October 20, one group going under Captain Watanabe and one group going under Colonel Tozuka?

A No, sir.

Q What day then was that expedition split up?

A After staying in Balete about one week -- I do not exactly remember what date it was -- the group split in two.

In the afternoon the group under Captain Watanabe left; on the following morning the group under Colonel Tozuka left.

Q Would you say, then, it was about the 27th of October?

A Maybe from October -- it is between October 25 to October 30.

Q Between the 25th and the 30th?

A Yes, about that date.

Q Which group, then, did you go with?

A Under Colonel Tozuka.

Q When was the next time, then, that you saw Captain Watanabe's group?

A The next time I saw personally Captain Watanabe was in Calibo.

Q Did the two groups then join back together?

A Yes, sir.

Q At the time you next saw Captain Watanabe?

A Some groups even from Capiz and Antique joined that force.

Q How large was the force at that time?

A While we were in Calibo the group from Iloilo, from Antique, and from Capiz amounted to more than one thousand, sir.

Q After you left Balete where did you go next?

A We went to Libacao.

Q When did you arrive there?

A I cannot remember the exact date any more.

Q How many days after you left Balete did you arrive in Libacao?

A Approximately about two and a half days.

Q Was that after the first of the month?

A It must be somewhere between 28th and 3rd.

Q Of October.

A 28th of October and the 3rd of November.

LIEUTENANT MC CULLOUGH: May I have that answer back, please.

(The last answer was read by the reporter.)

Q Where, then, did you go next?

A From Libacao we went to Banga; from Banga --

Q Just a moment. When, then, did you arrive in Banga?

A Well, I cannot remember the date when we arrived there. It must be somewhere in November 1943.

Q Was it during the first week of November?

A I cannot exactly remember.

Q How long were you in Banga?

A We stayed there only for one night.

Q What?

A One night; stayed a night in Banga.

Q Then where did you go next?

A From Banga we went to Calibo.

Q How long were you there?

A Stayed in Calibo for approximately four days.

Q About four days?

A Four days.

Q Could you give us the approximate date that you were in Calibo?

A Well, I cannot exactly tell the approximate date. I could no longer recall the approximate date.

Q Was it in the early part of November?

A Yes, it was in the early part of November.

Q From Calibo did you go to New Washington?

A Yes, to New Washington.

Q When did you arrive there?

A Where?

Q At New Washington.

A We arrived the same day we left Calibo.

Q And when did you leave New Washington?

A That very same day we left for Tablas Island.

Q At the time you left, then, New Washington, going to Tablas Island, how large was that party of Japanese soldiers?

A That group wherein we went with was about three motor launches -- it was about five hundred more or less.

Q Where did you land at Tablas?

A We landed at the municipality of Looc.

Q How long were you there?

A Upon landing at Looc we didn't stay there long. We stayed for about an hour. Then we walked to Odiongan, spending a night along the way, and from Odiongan we walked again to Despojols.

Q Can you give us the approximate date when you arrived at Despojols?

A That is about the third week, the third week of November.

Q How long, then, did you stay on Tablas Island before you returned back to New Washington?

A Stayed there for one week -- about ten days more of less.

Q Where did you leave Tablas Island going back to New Washington?

A We left at Odiongan.

Q When, then, did you arrive back at New Washington?

A We arrived at New Washington about the last week of November.

Q How large a party of Japanese soldiers were with you at that time when you again landed on Panay Island at New Washington?

A About the same group that went to Tablas Island. We went back together; about five hundred.

Q What happened, then, after you got to New Washington?

A From New Washington we proceeded to Calibo.

Q How long were you there?

A We stayed there for about one day only.

Q And then where did you go?

A To make the story long, from Calibo we went to Numancia to --

Q Just a moment. How long were you at Numancia?

A We just passed, just passed the town; didn't stay there.

Q Where, then, did you spend the next night?

A We spent the next night at Malinao.

Q How long were you there?

A We stayed there for only one night. Then the following day we started for the mountains, the mountains of Malinao.

Q Referring to mountainous territory in that area, would you be a little more specific as to exactly where you want?

A I cannot remember the exact date. It's many years ago

already. I could not remember it.

Q Do you remember the names of any of the barrios that you went through going up this mountain road?

A Well, I cannot remember the barrios.

Q What was the last barrio you remember leaving?

A The only barrio so far I remembered are barrio Rosal at barrio Libacao, and barrio Alaminos at barrio Libacao.

Q What was the barrio you remember returning back to after you had been in the mountains?

A I cannot remember.

Q After you had been up in the mountains, then, what was the next city that you came to?

A From the mountains of Malinao we patrolled there for about five days and then we went, we landed at a certain place between Libacao and Banga; from the mountains we went to that place. It's between Libacao and Banga.

Q How long were you in Rosal?

A We stayed there about two hours.

Q How long were you in Libacao?

A Libacao?

Q Yes.

A Approximately one week.

Q When, then, did you leave Libacao?

A I cannot remember the exact date.

Q Can you give us the approximate time?

A Approximately it is about between the 1st and the 8th of November.

Q Of November?

A Between the 1st and the 8th, it is between those dates.

Q When, then, did you arrive at Banga?

A The first time we went to Banga on that expedition three times.

Q I am talking about the last time that you left Banga on your return trip. When was that?

A In return from where? Because we went to Banga -- from Libacao we went to Banga, from the mountains of Malinao we went to Banga.

Q When, then, was the last time that you were in Banga on this expedition?

A I cannot remember the exact date.

Q Was it during the first week of November or during the first half of November?

A The second time we went to Banga it is already about December.

Q When?

A It is already about December because we went to Banga the second time after we came from Tablas Island.

Q. To be sure that we are both talking about the same thing, I am talking about the return after you had been to Tablas Island. You only went there once, is that correct?

A After Tablas I only went there once only.

Q You were only on Tablas Island once, is that right?

A Yes, once.

Q After you returned from Tablas Island when was the first time that you went to Banga?

A It was about the first or the second week of December.

Q What did you do between the first week of November and the first of December?

A The first of what?

Q You said you were in Libacao between the 1st and the 8th of November. Then you arrived in Banga about the 1st of December, you said. What happened during those three weeks?

A Those three weeks we went from Libacao to Banga, Banga to Calibo, Calibo to New Washington, New Washington to Tablas, then Tablas back again to New Washington, New Washington to Calibo, Calibo to Numancia, Numancia to Macato, then to Malinao, to the mountains of Malinao, then to a certain place between Malinao and Banga, then back again to Banga.

Q The last time you were in Banga was approximately on the 1st of December 1943, is that right?

A I cannot be sure of that.

Q That is with this expedition we are talking about?

A It must be about the first or the second week of December; I cannot exactly remember the approximate date.

Q Then when did you leave Banga?

A I cannot remember the exact date.

Q Was it in the middle of December.

A Well, the first week of December.

Q Where did you go then?

A From Banga we went to Calibo, from Calibo to Numancia, Numancia to Macato, Macato to Ibajay, Ibajay across the mountain road to Pandan, then from Pandan back to Iloilo City.

Q Are you describing the same trip or a different trip that you have described in your previous testimony?

A It's a different trip; that is the homeward trip already.

Q That is a new trip?

A A new trip.

Q One that you have not previously mentioned?

A Yes.

Q All right. Then what was the last town that you were just in that you just named?

A Pandan.

Q Then when did you leave [redacted]?

A We left Pandan on December 18.

Q Where did you go then?

A We went to Iloilo, went back to Iloilo and we arrived in Iloilo in the afternoon of December 19, 1943.

Q Did you go over a land route or did you go back up and take a sea route back to Iloilo?

A Sea route, by motor launch.

Q Where did you embark from?

A We embarked at Pandan; then we returned to Iloilo.

Q Tell me again when you left Pandan.

A December 18.

Q Now, again, when you arrived back in Iloilo?

A December 19, 1943.

Q What happened then after you arrived back in Iloilo?

A Upon reaching Iloilo I was just left alone. I was just left free without being told that you are free, or what; I just went home.

Q You went home?

A Yes, sir.

Q When did you first join the guerrillas?

A Joined the guerrilla November 1, 1942.

Q What year?

A November 1, 1942.

Q Where was that?

A In Guimbal, Iloilo.

Q At that time who was your commanding officer?

A Major Gelvezon.

Q How do you spell his name?

A G-e-l-v-e-z-o-n.

Q What was his rank?

A During that time when I joined the guerrilla he was a captain; now he is a major.

Q Do you know who his commanding officer was at that time? Captain Gelvezon whom you just referred to, who is his commanding officer?

A I do not know.

Q What unit was that when you first joined?

A That first unit was the 1st Battalion of the 65th Infantry, tactically attached to the 63rd Infantry, Panay Guerrilla.

Q Do you know who the commanding officer of that division was at that time?

A I heard it was Lieutenant Colonel Relunia.

Q What was the next organization of guerrillas that you were attached to?

A I beg your pardon?

Q I understood you to say that at first you were with the 1st Battalion, 65th --

A 1st Battalion of the 65th Infantry.

Q All right. And that you --

A Later on that very same unit was made the 3rd Battalion of the 63rd Infantry.

Q Who was the commanding officer at that time?

A The time when I was captured?

Q At the time when you joined this new organization, 3rd Battalion, 63rd Infantry, who was the commanding officer?

A When I joined -- well, it cannot be said that I joined because the very same unit, 65th, was made 3rd Battalion.

Q Was Colonel Relunia your commanding officer?

A Of what?

Q Of the 63rd Infantry Division.

A It was Lieutenant Colonel Chavez.

Q Was that also known as the 63rd Combat Team in southern Iloilo Province?

A Yes, sir.

Q How many men were in that organization?

A I do not know.

Q Would you say there were over 3200 enlisted men in the organization?

A That I cannot tell, the approximate number.

Q Would you say there were 190 officers?

A I cannot.

Q Would you say that was wrong?

A It may be wrong, it may be right; I do not know.

Q Would you say you had some 1400 arms in that organization, small arms?

A I do not know figures like that.

Q Do you know whether or not you had some 37,000 rounds of ammunition at that time?

A I do not know.

Q What was your rank in this organization?

A I was inducted with the rank of a sergeant; then promoted to the rank of a first sergeant.

Q What rank did you hold when the war ended?

A I was a first sergeant.

Q Did you ever have any active engagements of any kind with the Japanese while you were a member of the 63rd Combat Team?

A Never.

Q Did they ever do any fighting of any kind?

A No, sir.

Q Did the 63rd ever kill any Japanese at all?

A The 63rd has killed Japanese.

Q What was your answer?

A It has killed some Japanese.

Q How many Japanese would you say that you killed?

A I do not know the figure.

Q Did you yourself kill any?

A I have not.

Q You never killed a Japanese?

A Never.

Q Do you know whether the 63rd killed any in September of 1943?

A I do not know.

Q Did they kill any at all in 1943?

A I cannot say about that.

Q Did you ever hear any of your organizations, any men in the 63rd, ever say that they ever killed any Japanese at any time during 1943?

A I have not heard.

Q Or 1944?

A I have not heard about that.

Q Or up until the war ended?

A I heard only they have killed some, even captured some, but I do not know the exact figure about that.

Q Did you ever see any who were captured?

A Yes.

Q How many?

A Two. That was after I joined the guerrilla.

Q Who was the commanding officer of the 63rd Combat Team?

A Lieutenant Colonel Chavez.

Q Who was his commanding officer? Who was Colonel Chavez' commanding officer?

A Well, as far as I know, the highest commander of the Panay guerrilla is Colonel Peralta.

Q Was he over the 6th Military District of guerrillas at that time?

A Yes, sir.

Q How many guerrillas would you say were in the Sixth Military District?

A I cannot exactly tell.

Q Would you say there were approximately 22,000 during 1943?

A I do not know figures like that.

Q Would you say that figure was wrong?

A It may be wrong, it may be right.

Q How many supporters do you think you had on the Island of Panay? Would you say there were as many as 130,000?

A I do not know anything about that.

Q Would you say there were ever more than 2,000 Japanese on the Island of Panay during 1943?

A I do not know.

Q Would you say that was wrong?

A It may be wrong, it may be right.

Q At any time between October 18 or 17, when this expedition started out, and December 18 when you got back to Iloilo, did you ever see this Japanese officer standing here beside me?

A I have not seen him.

LIEUTENANT MC CULLOUGH: That's all.

Let the record show that the Japanese officer that I referred to is General Kono.

CAPTAIN YARD: We have no further questions, sir.

COLONEL HAMBY: Questions by the Commission? There appear to be none.

The witness is excused.

(Witness excused.)

CAPTAIN YARD: The next witness is Tomas Digohermano.

TOMAS DIGOHERMANO

a witness for the prosecution, was duly sworn and testified as follows through Interpreters Villaluz, Genoves, and Lagdameo:

DIRECT EXAMINATION

BY CAPTAIN YARD:

Q What is your name?

A Tomas Digohermano.

Q How old are you?

A 15 to 16.

Q What is your nationality?

A Filipino.

Q What is your present address?

A Dumangas, Iloilo.

Q Is that D-u-m-a-n-g-a-s?

A Yes.

Q What is your occupation?

A Conductor.

Q Of what kind of a conveyance?

A A jitney.

Q Were you taken by the Japanese in October of 1943?

A Yes.

Q Just before you were taken where did you live?

A At Dumangas.

Q Where did the Japanese take you?

A To the Bilibid Prison.

Q Where was that?

A At Iloilo.

Q And while you were in prison did you see Felizberto Grijalvo?

A Yes.

Q Did the Japanese force you to work for them?

A Yes.

Q What kind of work did you do?

A As cargador.

Q Where did they make you go to work?

A I was brought to their camp.

INTERPRETER LAGDAMEO: Correction. I was brought in, in their campaign, to go with them in their campaign.

Q Were you taken to Batan in Capiz Province?

A Yes.

Q Was that from Iloilo City?

A Yes, from Iloilo.

Q And how did you go from Iloilo to Batan?

A With a launch.

Q And about how many Japanese went on that trip?

A More or less 500.

Q Do you know whether Felizberto Grijalvo went on the trip?

A Yes.

Q Do you know a Japanese officer, Lieutenant Colonel Tozuka?

A Yes.

Q Before leaving for Batan did you see Colonel Tozuka?

A Yes.

CAPTAIN YARD: I beg the Commission's pardon. I neglected to mention that this witness' testimony will relate to Specifications 29, 30, and 31. As to those specifications it will be corroborative. It will also relate to Specifications 34 and 35.

Q I hand you a photograph that is Prosecution's Exhibit 3 and ask you to tell whose picture that is, if you can.

A Colonel Tozuka.

Q Is this the Colonel Tozuka that you saw at Iloilo before you went to Batan?

A Yes.

Q What was he doing before you went to Batan when you saw him?

A He was commanding the Japanese.

Q Did he go on the launch upon which you went?

A Yes.

Q Did you know any of the other Japanese who went on the launch with you?

A Yes.

Q Who were they?

A Kumai, Matsuzaki, Otsuka, Kuwano.

Q Were they all on your launch?

A No.

Q Was Colonel Tozuka on your launch?

A No.

Q Do you know when you left Iloilo for Batan?

A Yes.

Q When was that, about?

A October 17, 1943.

Q And when did you get to Batan?

A October 18.

Q What time of the day did you get there?

A Between 5:00 and 6:00 in the afternoon.

Q And what did you see when you got to Batan?

A i saw the Japanese capture the civilians.

Q About how many civilians?

A More or less one hundred.

Q Where were they taken?

A Inside the town of Batan.

Q Were these civilians captured by the Japanese?

A Yes.

Q Did you recognize any of the Japanese that were present when these civilians were being questioned?

A Yes.

Q Who were they?

A Kumai, Matsuzaki, Otsuka, and Kuwano.

Q Did you see Colonel Tozuka there?

A Yes.

Q I hand you Prosecution's Exhibit 5, being a photograph, and ask you to state whose picture that is.

A Otsuka.

Q Is that the Otsuka to whom you just referred?

A Yes.

Q I hand you Prosecution's Exhibit 7, being a photograph, and ask you to state whose picture that is, if you can.

A This is Kumai.

Q Is that the Kumai to whom you have just referred in your testimony?

A Yes.

Q I hand you Prosecution's Exhibit No. 9, being a photograph, and ask you whose picture that is.

A Matsuzaki.

Q And is that the Matsuzaki to whom you have just referred to in your testimony?

A Yes.

Q I hand you Prosecution's Exhibit No. 11, being a photograph, and ask you whose picture that is.

A It's Kuwano.

Q Is that the Kuwano to whom you have just referred in your testimony?

A Yes.

Q Who questioned these civilians that were gathered together in Batan?

A Kuwano, Otsuka, Matsuzaki, Kumai.

Q Where were you while this questioning was going on?

A I was also there.

Q How far away?

A About more or less ten meters.

Q What methods were used in questioning these civilians?

A They were beaten.

Q Was anything else done to them?

A That's all.

Q Do you know what happened to these more or less one hundred civilians at Batan?

A They were all killed by the Japanese.

Q Who killed them?

A The Japanese.

Q Which one of the Japanese if you know?

A Otsuka and Kuwano.

Q Where were they killed?

A By the side of the road.

Q Was that near where they had been questioned?

A Yes.

Q How were they killed?

A They were hacked with sabers.

Q Were their heads cut off?

A They were beheaded.

Q Were there men, women, and children in this group?

A Yes.

Q How were the children killed?

A They were stabbed with bayonets and hacked with sabers.

Q Do you know what was done with the bodies?

A They were just left.

Q Where were you when this killing was going on?

A I was also there.

Q Do you remember what time of the day the killing occurred?

A Yes.

Q When was it?

A About three or four in the early morning.

Q Was that the day after you arrived at Batan?

A Yes.

Q About how many persons were killed?

A More or less one hundred.

Q Did you accompany this expedition to Altavas?

A Yes.

Q What happened at Altavas?

A The Japanese also captured civilians.

Q Were they questioned?

A Yes.

Q What methods were used on them when they were questioned?

A They were asked where the headquarters of the Army were.

Q Did you see anyone mistreated while they were questioned?

A Yes.

Q How many civilians were rounded up at Altavas?

A More or less between thirty and forty.

Q Was Colonel Tozuka there?

A Yes.

Q What was done with these civilians after they were questioned?

A They were killed.

Q Who killed them?

A The Japanese.

Q Did you know the Japanese?

A No.

Q Were you there when the Japanese killed these civilians?

A Yes.

Q Do you remember when it was that you went to Altavas?

A October 19, 1943.

Q Were there men, women, and children who were killed at Altavas?

A Yes.

Q How were they killed?

A They were hacked on the neck with sabers.

Q Do you mean beheaded?

A Yes.

Q Do you know what was done with the bodies?

A They were just left.

Q Did you see them after they had been killed?

A Yes.

Q When you left Altavas where did you go?

A Balete.

Q About when did you get to Balete?

A On the next day.

Q Would that be about October 20, 1943?

A Yes.

Q What happened at Balete?

A The Japanese captured civilians.

Q How many civilians?

A More or less between fifteen and twenty.

Q Were these people questioned?

A Yes.

Q After they were questioned what was done with them?

A They were killed.

Q By whom?

A Otsuka.

Q How were they killed?

A Their necks were cut with sabers.

Q Do you mean they were beheaded?

A Yes.

Q Were they men, women, or children?

A No.

Q What were they?

A Only men, old men.

Q Old men, do you mean?

A Yes.

Q Do you know why they were killed?

A I don't know.

Q Do you know whether they received a trial before they were killed?

A No.

Q You mean that they didn't receive a trial or you don't know whether they received a trial?

A They were not given a trial.

Q Did you see them being killed yourself?

A Yes.

Q Did you see anyone besides Otsuka kill these people?

A No more.

Q And is that the Otsuka whose picture you identified a little while ago?

A Yes.

Q While you were at Balete did you go on any patrols with the Japanese?

A Yes,

Q Where did you go?

A At Banga.

CAPTAIN YARD: This testimony will relate to Specifications 31 and 34.

Q How large was the patrol which you accompanied to Banga?

A More or less between forty and fifty.

Q Who was in charge of the patrol?

A Kuwano.

Q Was that the Kuwano whose picture you identified a little while ago?

A Yes.

Q What happened when you got to Banga?

A The Japanese captured civilian Filipinos.

Q About how many?

A More or less sixty.

Q What was done with those civilians?

A They were killed.

Q About what time of the day did you reach Banga?

A About seven in the morning.

Q Do you remember the approximate date?

A Yes.

Q When was it?

A October 21.

Q Now, these sixty civilians, how were they killed?

A Not all of them were killed.

Q How many of them were killed?

A More or less between fifteen and twenty.

Q How were they killed?

A They were hacked to death with sabers.

Q Again, do you mean they were beheaded?

A Yes.

Q What happened to the others of the sixty?

A We brought them back to Balete.

Q Now, those that were killed at Banga, were they men, women and children?

A They were women, children and old men.

Q And who killed them?

A Kuwano.

Q Were you present when he was killing these people?

A Yes.

Q Did you see any other Japanese participate in the killing?

A No more.

Q What was done with the bodies?

A They were just left.

Q Did you see the bodies after these people had been killed?

A Yes.

Q How did you bring the others back to Balete?

A We were all tied together, hands behind the backs.

Q When you returned to Balete what was done with these persons?

A They were imprisoned.

Q Did you go again with patrols to Banga?

A Yes.

Q How large a patrol?

A Between forty and fifty.

Q Who was in charge of the patrol?

A Kuwano.

Q Was that the same Kuwano whose picture you identified awhile back?

A Yes.

Q What happened when you went to Banga this time?

A Two minutes upon arrival we saw civilians in parade formation with white flags.

Q Why were they in that formation with white flags?

A To surrender to the Japanese.

Q What happened?

A They were killed.

Q By whom?

A Japanese.

Q Were they divided any way before they were killed?

A Yes.

Q How was that?

A Thirty women were separated.

Q What was done with these women?who were separated?

A They were placed inside the house.

Q Then what was done when they were placed inside the house?

A They were all machine-gunned by the Japanese.

Q Do you know who the Japanese were who machine-gunned them?

A No.

Q Were they Japanese who were in the Kuwano patrol?

A Yes.

Q What was done with the other civilians?

A They were placed near the cadre and machine-gunned.

Q What do you mean by "cadre"?

A I don't know.

Q On the patrols to Banga approximately how many people did you see killed?

A More or less three hundred.

Q And were they all civilians?

A Yes.

Q Did you see any of these persons who were killed fighting with the Japanese soldiers?

A No.

Q Do you know whether any of these persons received a trial before they were killed?

A No.

Q You mean they didn't receive a trial or you don't know whether or not they received one?

A I don't know.

Q After the first patrol did you ever bring civilians back to Balete?

A Yes.

Q Do you know what was done with those persons who were brought from Banga back to Balete?

A They were imprisoned.

Q How long did you stay at Balete?

A More or less one week.

Q Was anything done to these civilians who were imprisoned before you left Balete?

A No.

Q Do you know whether or not they were ever killed?

A They were killed.

Q By whom?

A Kuwano and Otsuka.

Q About how many did you see killed by Kuwano and Otsuka at Baleta?

A Between fifty and sixty.

Q Did any other Japanese participate in the killing of these civilians at Balete?

A No more.

Q Were you present when they were killed?

A Yes.

Q Where were they killed at Balete?

A Near the road.

Q Did you see any persons near Balete killed near the river?

A Yes.

Q Who killed the persons near the river?

A Kuwano and Otsuka.

Q Do you know any of the persons who were killed at Batan, Altavas, Banga, or Balete?

A No.

Q When you left Balete where did you go?

A We proceeded to the mountains of Tapaz.

Q Was that between Libacao and Tapaz?

A Yes.

Q When you left Balete had the expedition divided into groups

A The expedition was divided into two groups.

Q And who commanded these groups?

A Watanabe.

Q Were you in the Watanabe group?

A Yes.

Q Do you know who commanded the other group?

A Colonel Tozuka.

Q While you were in the mountains of Tapas did you see any civilians killed?

A Yes.

Q About how many Japanese were in your group?

A More or less three hundred.

Q Did you recognize any of the Japanese that were along in your group.

A Yes.

Q Who were they?

A Kuwano, Kumai, Otsuka, and Matsuzaki.

Q How long did it take you to reach the mountains of Tapaz?

A More or less three days.

Q Did you see these persons killed along the way?

A Yes.

Q About how many persons did you see killed?

A I don't know.

Q Could you estimate the number?

A More or less two hundred.

Q Who did you see kill these people?

A Kuwano and Otsuka.

CAPTAIN YARD: This is Specification 35, sir.

Q Did you see any of the other Japanese kill any of the civilians?

A Yes.

Q Do you know their names?

A No.

Q Do you know the names of any of the civilians that were killed?

A No.

Q While you were on your way to the mountains of Tapaz was your group attacked by the civilians?

A No.

Q At any time while you were on this entire punitive expedition were the Japanese ever attacked by any civilians or guerrillas or anyone?

A No.

Q How long did you stay in the mountains of Tapaz?

A More or less ten days.

Q While you were in the mountains did you see anyone killed?

A Yes.

Q Approximately how many?

A I don't know.

Q Were they men, women and children?

A Yes.

LIEUTENANT COLONEL CHASE: Did he estimate a number of that?

CAPTAIN YARD: No, sir.

Q Did you see any civilians captured who were not killed?

A No.

Q From the mountains of Tapaz where did you go?

A Libacao.

Q And about when was it that you arrived at Libacao?

A All I can remember is it was in the month of October.

Q From Libacao where did you go?

A Banga.

Q How long did you stay in Banga?

A One evening.

Q From there where did you go?

A Calibo.

Q How long did you stay at Calibo?

A Two days.

Q Where did you go from Calibo?

A New Washington.

Q How long did you stay in New Washington?

A Less than one day.

Q Where did you go from New Washington?

A We rode in a launch.

Q Where did you go?

A We went to Iloilo.

Q About what time did you arrive back in Iloilo?

CAPTAIN YARD: Let me rephrase that question, please.

Q Do you remember the approximate date that you returned to Iloilo City?

A I can only remember the month, November.

Q When was the last time on this expedition that you saw Colonel Tozuka?

A From Batan to Balete.

Q That is when the groups divided at Balete?

A Yes.

CAPTAIN YARD: You may cross-examine.

COLONEL HAMBY: The Commission will take a short recess.

(Short recess.)

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: Will you remind the witness he is still under oath?

(Interpreter translated to the witness.)

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q I believe that you said when you arrived at Altavas that you did not know any of the Japanese who actually did the killing, is that correct?

A No.

Q What is correct, then?

A I know some.

Q Who are they?

A Kuwano and Otsuka.

Q Did they do all of the killing that you saw in Altavas?

A Yes.

Q When you arrived at Balete on October 19 you said they fought and captured certain civilians, Will you explain what you meant?

A No.

Q "No , you didn't say that," or "No , they did not fight the civilians"?

A I cannot understand.

Q Did you see any fighting between the Japanese patrol and the civilians at Balete at any time?

A No.

Q How many patrols were you on out of Balete to Banga.

A Between forty and fifty.

Q Do you understand my question? The question is: You said that you went out from Balete to Banga on October 21 on a patrol, is that correct?

A Yes.

Q And that you returned to Balete again later and went out on another patrol to Banga, is that correct?

A Yes.

Q Outside of those two, did you go on any more patrols with the Japanese out of Balete to Banga?

A No.

Q Was it on the first patrol or the second patrol that you saw the civilians lined up together in the street when the patrol arrived?

A On the second.

Q About what time of the day did that second patrol arrive in Banga?

A More or less seven.

Q Was that in the morning or in the evening?

A In the morning.

Q How many Japanese soldiers were on that patrol?

A Between forty and fifty.

Q Were you at the headquarters of the Japanese when the patrol started out from Balete in the morning?

A Yes.

Q Did you see Captain Watanabe that morning before the patrol left?

A Yes, I saw him.

Q Did he go on the patrol?

A No.

Q When you arrived at Banga and these civilians were lined up in the street, how were they dressed?

A They wore civilian clothing.

Q Were they all men?

A No.

Q How many men were there and how many women were there?

A I don't know.

Q Approximately how many were there?

A I don't know.

Q Would you say there were forty or fifty?

A No.

Q Were there more than that or less than that?

A More.

Q More than a hundred?

A More than a hundred.

Q Were there two hundred?

A Almost.

Q Were there more than two hundred?

A I cannot reach that number.

CAPTAIN YARD: Is defense counsel referring to the total group?

LIEUTENANT MC CULLOUGH: Total group of civilians that were in the crowd in the street at the time the patrol arrived, is what I am referring to.

(To Interpreter) Will you explain that to the witness and ask him again if he can approximate the number of people that were in that crowd.

(Interpreter translated to the witness.)

THE WITNESS: (Through interpreter) More or less three hundred.

Q Do you know whether the mayor of Banga and the chief of police were in that crowd?

A No.

Q Did any of the civilians come out of the crowd and talk to the Japanese patrol?

A No.

Q How far were you from that crowd when the Japanese arrived?

A Between ten and fifteen meters.

Q Ten meters from where?

A From the place where I stood to where the civilians were gathered.

Q Did you see any firearms taken away from any of those civilians by the Japanese patrol that day at that time?

A No.

Q Did you see any of that crowd of civilians try to run away?

A No.

Q While they were there did you see any of them shot?

A No.

Q Any time during that day did you see any of them shot?

A Yes.

Q Where was that and tell what happened?

A At Banga. They gathered all the civilians near the cadre and machine-gunned them.

Q At the time they were machine-gunned were they attempting to escape or were they running away from the crowd?

A Yes.

Q Did you see any of the civilians attempt to grab the soldiers' rifles while you were there?

A No.

Q Were you with any of the Japanese patrol that searched the civilians' houses for firearms?

A No.

Q Were you in any of the houses when the firearms were taken by the Japanese soldiers that day?

A No.

Q Did they take any prisoners with them from Banga back to Balete that day?

A Yes.

Q How many prisoners did they take from Banga back to Balete that day?

A Between twenty and twenty-five.

Q What did they do with them after they returned to Balete?

A They were imprisoned.

Q Did you see any of the prisoners who were captured that day turned loose?

A No.

Q On that patrol did you see anyone other than Kuwano or Otsuka kill any civilians?

CAPTAIN YARD: Just a moment, please. I think the question is a little confusing to the witness for the reason that the witness has testified that only Kuwano was on the patrol. I believe his testimony is that.

LIEUTENANT MC CULLOUGH: Withdraw that question, then.

Q I ask you if anyone other than Kuwano killed any of those civilians that day.

A No.

Q About what time at night did you return from Banga back to Balete on the second patrol?

A Between six and seven in the afternoon.

Q Did you stay in Balete for several days before you left again?

A More or less at Balete.

Q Then I believe you said that you had gone up in the mountains, is that correct?

A I don't know.

Q You don't know whether or not you went up in the mountains, is that right?

A No.

Q After you went back to Balete from this patrol that you had been in in Banga, where, then, did you go; what was the next place?

A After a week there at Balete we proceeded to the mountains of Tapaz.

Q Do you know whether or not you went up to Mount Aklan?

A No.

Q How many days were you in the mountains?

A More or less ten days.

Q How many Japanese soldiers were with you at that time?

A More or less three hundred.

Q Did you see the wireless apparatus that they captured while you were up in the mountains at that time?

A No.

Q

A No.

Q While you were in the mountains did you see a wireless station at any time?

A No.

Q Did you see any of the other cargadors carrying back any of the wireless equipment?

A No.

Q Did you ever hear of a wireless or radio station up in the mountains when you were on that particular expedition ?

A No.

Q After you returned from the mountains where did you go?

A Libacao.

Q How long were you there?

A Less than one day.

Q Will you tell me again when you arrived back in Iloilo from the expedition?

A I can only remember the month; November.

Q How many motor launches were in the group that returned back to Iloilo with your party?

A One.

Q How many motor launches were in the party when it started out on October 18 or 17.

A Three launches.

Q Do you know what happened to the other two launches that started out on that trip?

A No.

Q I ask you if you have ever seen this Japanese officer standing beside me at any time during that expedition.

A No.

Q When you went out on this patrol were there other Japanese soldiers and other cargadors ahead of your party?

A No.

LIEUTENANT MC CULLOUGH: Let the record show that the Japanese officer I referred to as standing, in the next to the last question, was General Kono.

CAPTAIN YARD: I have one or two additional questions, sir.

REDIRECT EXAMINATION

BY CAPTAIN YARD:

Q On the second patrol to Banga were their children in the group of civilians that were parading or in parade formation when the Japanese took them?

A Yes.

Q Did you see any of these children killed by the Japanese?

A Yes.

Q Did you see any of the children machine-gunned by the Japanese?

A Yes.

Q Was it on this second patrol where they separated the girls and put them in the house and then machine-gunned the house?

A The children were not included.

Q Was it on the second patrol that they separated the women from the rest of the civilians?

A Yes.

Q Was it Kuwano's men that machine-gunned these civilians on the second patrol?

A Yes.

CAPTAIN YARD: I have no further questions, sir.

LIEUTENANT MC CULLOUGH: Nothing further, sir.

COLONEL HAMBY: Questions by the Commission? There appear to be none. The witness may be excused.

(Witness excused.)

The Commission will recess until 1300.

(The Commission recessed at 1130 hours.)

AFTERNOON SESSION

The Commission convened, pursuant to recess, at 1300 hours, 18 April 1946.

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: May the record show that all members of the Commission are present, that the accused. together with his defense counsel and personal interpreter and members of the prosecution are present.

May it please the Commission, in view of the fact that Colonel Goff of the Commission was not present at this morning's session, and in keeping with the procedure followed heretofore in this trial, we request permission to direct certain questions to the Colonel.

COLONEL HAMBY: Proceed.

CAPTAIN YARD: Sir, are you familiar with the proceedings that took place this morning in the trial against Takeshi Kono?

COLONEL GOFF: Yes.

CAPTAIN YARD: With permission of the Commission, the prosecution will acquaint the Colonel with the substance of this morning's proceedings.

COLONEL HAMBY: Proceed.

CAPTAIN YARD: This morning's trial against Takeshi Kono began at approximately 8:30, at which time the prosecution called as its first witness Felizberto Grijalvo. This witness' testimony related to Specifications 29, 30, 31, 32, and 33.

In substance the testimony of the witness on direct and cross-examination was as follows: that some time in October 1943 he was taken prisoner by the Japanese. Prior to that time he had lived in Iloilo Province and had been a member of a guerrilla organization. He was taken to the provincial jail in Iloilo and on October 17, 1943, set forth as cargador with approximately five hundred Japanese soldiers by motor launch for Batan, Capiz Province; that on October 18, 1943, this expedition, headed by Colonel Tozuka, arrived at Batan; that while he was at Batan he witnessed the execution of approximately one hundred civilian citizens of that community who had been rounded up by the Japanese; that these civilians had been questioned by Otsuka, Kuwano, Matsuzaki, and other Japanese; that following their questioning, some time the following morning, being about October 19, 1943, they were executed by beheading, except for the children who were killed by being pierced with a saber; that Otsuka and Kawano did the killing; that this time he saw Colonel Tozuka present, both at the time of the investigation of these civilians, and later at the time of the killing; that thereafter the expedition went to Altavas, Capiz; that in Altavas certain of the citizens were rounded up, investigated, and tortured as they had been at Batan, and that here, approximately between thirty and forty of these civilians, the witness said, were executed.

From Altavas the expedition went to Balete. I might say that the witness was present at the executions that occurred in Altavas; that he knew none of the victims either in Batan or Altavas; that at Balete he witnessed the

execution of approximately one hundred civilians which included two groups of civilians which had been brought back by patrols which had gone from Balete to Banga; that the expedition remained at Balete for about a week; that near the end of the stay at Balete the one-hundred civilians were killed; that included in this group were men, women, and children.

He testified that at least a portion of this group were killed -- or perhaps all, I don't recall -- on the bank of a river which flowed near that town, is that correct, Lieutenant McCullough?

LIEUTENANT MC CULLOUGH: I would say it was a fair summary.

CAPTAIN YARD: That the expedition then divided into two groups at Balete, one group headed by a Captain Watanabe and the other by Colonel Tozuka; that the group of which the witness was a part then finally arrived at Despojols in Tablas Island, Romblon Province; that he went there by motor launch.

He testified that while there he went on a patrol with Lieutenant Kumai, the witness identifying the photograph as he did the photograph of the other Japanese whom we have mentioned. While on this patrol one civilian was killed by a Japanese interpreter upon the order of Kumai, the interpreter's name being Simoje. This was an old man who was killed with his own bolo; that on the same patrol and in the mountains near Despojols the patrol encountered a woman thirty years of age in a mountain hut at a place where no other civilians were around, the witness stating

that they had run away because they were afraid of the Japanese; that this woman was brought in front of Kumai and her clothes removed from her. She was abused by being touched in her private parts; that Kumai said something to the soldiers who were present on the patrol, the woman's hands were bound behind her back as were her feet, a rope put through her hands and feet and she was hanged head downward from a tree; that the patrol left her, it was raining, and that the woman was blind.

On cross-examination the witness testified as to the route followed by the patrol thereafter. He stated, as I recall, that the Japanese had not been subject to any attack while on the balance of the expedition; that that was from the time they left Iloilo, October 17, 1943, until they returned to Iloilo in December of 1943. As I recall he stated that he did not find any wireless equipment. He stated further on cross-examination that he had been in two guerrilla units prior to his capture by the Japanese; that he had not killed any Japanese while a member of these units; that he had been a first sergeant; that he had heard that the Sixty-third, of which he was a member, had killed some Japanese, had captured some; that he saw two of these Japanese; that when he returned to Iloilo after this expedition he was set free without any formality.

The second witness for the prosecution was Tomas Digohermano, whose testimony was corroborative of Specifications 29, 30, and 31, and who supplied the proof for Specifications 34 and 35. He testified he too had been taken by the Japanese in October of 1943 and incarcerated in

Bilibid Prison in Iloilo; that he accompanied the punitive expedition to Batan; that he saw Colonel Tozuka in charge of the loading operations on October 17, 1943; that there were approximately five hundred Japanese soldiers on the expedition.

They went to Batan by three motor launches. He testified that when he arrived at Batan he saw the citizens being rounded up, interrogated, mistreated during their interrogation, and that subsequently a hundred more or less were executed, he being within a few meters of the execution; that Kuwano and Otsuka did the killing. He testified also that he had gone to Altavas and that there he saw, as I recall, thirty or forty civilians rounded up; that they were executed by Otsuka and Kuwano; that he saw no one else participate in the execution; that they were mistreated during the interrogation; that he saw a part of those persons killed along the banks of the river; that from Altavas he went with the expedition to Balete; that in Balete there were citizens rounded up, a number of fifteen to twenty; that these civilians were subsequently executed; that he went on the two patrols to Banga; that on the first patrol in Banga they captured about fifty to sixty civilians; that fifteen or twenty of these civilians were executed by Kuwano, who was in charge of the patrol which consisted of about fifty men; that the balance of approximately twenty-five persons were tied and returned to Balete where they were imprisoned; that on the next morning the Kuwano patrol, with the witness along, returned to Balete and they saw a group of civilians in what he termed parade formation with

white flags, wanting to surrender to the Japanese; that they talked with the Japanese who inquired as to the whereabouts of the mayor; that this group was made up largely of men, old men, women, and children; that fifteen or twenty of the young women were taken out of this group and put into a house where they were machine-gunned by Kuwano's men; that the rest of the group were placed in a place he called the cadre, and there they were machine-gunned by Kuwano's men.

The witness estimated the size of the group to be approximately three hundred; that thereafter the expedition remained in Balete for about a week, and that the group was divided into two groups, as Grijalvo had testified, one headed by Tozuka and the other by Captain Watanabe; that he did not go with the group of which Grijalvo was a part but that his group, numbering about three hundred men, went to the mountains of Tapaz between Libacao and Tapaz; that en route to the Tapaz mountains numerous civilians were captured by the Japanese and were killed; that he saw no civilians spared.

As I recall, he estimated about two hundred persons were killed on that penetration.

They remained in the Tapaz mountains about ten days. Thereafter the witness said the expedition, after going to one or two other places, finally, I believe, returned to New Washington and made one other stop, and then returned to Iloilo City in November of 1943. I might add that this latter witness was between fifteen and sixteen years of age and gave his occupation on the trip as that of cargador and that his present civilian occupation is conductor on a jitney.

This witness said that the expedition had not been attacked by the civilians on the entire expedition.

CAPTAIN YARD: Lieutenant McCullough, do you have anything you want to add to that?

LIEUTENANT MC CULLOUGH: No, I would say that was a fair summary. However, I wish to call the Commission's attention to the fact that what was said was not the best evidence. The best evidence is the transcript itself. While I know it has been the practice to follow this procedure for a long time, I just wish to call the Commission's attention to this fact: that each time the prosecution again summarizes the witnesses' testimony for the absence of one of the Commission members, it gives him an additional opportunity to argue his case.

CAPTAIN YARD: I might say here that if there is some place where I misstated, I would be very happy to have you correct me.

LIEUTENANT MC CULLOUGH: I think that Captain Yard has given asfair a summary as possible but I merely make that point to the Commission for their consideration.

COLONEL GOFF: The Commission will also read the exact testimony in the transcript.

CAPTAIN YARD: Is there anything further, sir?

COLONEL HAMBY: Nothing further.

CAPTAIN YARD: May we proceed?

COLONEL HAMBY: Proceed, please.

CAPTAIN YARD: Prosecution's next witness is Paterno H. Enano, whose testimony will relate to Specification 36.

PATERNO H. ENANO

a witness for the prosecution, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY CAPTAIN YARD:

Q Will you state your name, please?

A Paterno H. Enano.

Q Are you in the Philippine Army?

A Yes, sir.

Q What is your rank?

A Staff sergeant, sir.

Q And what is your organization?

A Headquarters Company, Third Battalion, sir.

Q Headquarters Company, Third Battalion?—

A 52nd Infantry.

Q Where is the headquarters of the 52nd Infantry?

A Headquarters Company, Third Battalion, 52nd Infantry, Camp Hernandez, Dingle, Iloilo Province.

Q During the month of December 1943, were you in the employ of the Japanese Army?

A Yes, sir.

Q What were your duties?

A I was with the Japanese group, with the Japanese soldiers.

Q Doing what?

A I went with the Japanese soldiers; that was my only work there.

Q What did you do with the Japanese soldiers?

A I followed them wherever they went.

Q For what purpose?

A At times I was called also to interpret.

Q As an interpreter. Were you paid by the Japanese Army?

A At the very start I was not paid but later on I was.

Q Did you accompany an expedition into Capiz province around the 18th of December 1943?

A Yes, sir.

Q In the course of that penetration did you go to the municipality of Tapaz?

A Yes, sir.

Q And did you visit what was known as Camp Hopevale?

A Yes, sir.

Q What organization was located at Camp Hopevale?

A There were a group of missionaries there.

Q Were these American or Filipino missionaries?

A They were American missionaries.

Q Do you know of what church they were?

A They belonged to the Baptist Church.

Q Prior to the time that you went to Camp Hopevale, were you familiar with any of the members of that missionary group?

A Yes, sir.

Q Who was that?

A There were Dr. Rose, Mrs. Rose, Mr. and Mrs. Covell, and Miss Dowell.

Q Were they, to your knowledge, members of the Baptist Convention?

A Yes, sir.

Q Had you been to Camp Hopevale prior to December 18, or whenever the date was in 1943?

A Never been, sir.

Q Where did you become acquainted with these persons whom you have mentioned?

A I was acquainted with these persons because they are the ones who were my professors in the Central Philippine College.

Q These missionaries, or part of them, also taught in the Central Philippine College, is that right?

A Yes, sir.

Q How large a force went on this expedition to Tapaz?

A The force, sir.

Q Yes,

A It is around four hundred to five hundred men.

Q And who was in charge of the group?

A At the very start I knew that Colonel Tozuka was in charge, but in Camp Hopevale it was Captain Watanabe who was in charge.

Q I hand you Prosecution's Exhibit 3, being a photograph, and ask you to state if you can whose picture that is.

A It is Colonel Tozuka.

Q And that is the Colonel Tozuka who was in charge of the group when it first started out, is that right?

A Yes, sir.

Q Captain Watanbe, whom you just mentioned, is that Kengo Watanabe?

A I didn't know the first name, sir; I only knew him to be Captain Watanabe.

Q Do you know what happened to Captain Watanabe.

A Through gathered information I knew that he was killed.

Q When did you get to Camp Hopevale?

A We arrived at Camp Hopevale way back, December 18, 1943.

Q What happened when you arrived there?

A Upon reaching the place the group wherein I was was divided into small groups of about four or five men and searched the place. Camp Hopevale was surrounded by the Japanese soldiers wherein I went with.

Q How many were in the group that went to Camp Hopevale?

A Around two hundred to two hundred and fifty went inside the camp proper.

Q Was it members of this same group that surrounded the camp?

A Yes, sir.

Q What type of a camp was it?

A Well, it was made of small huts wherein these poor missionaries stayed.

Q The homes of the missionaries?

A Yes, sir.

Q Did you see an altar constructed out in this area?

A When we entered the camp I didn't see the altar, but when we stepped out we saw the altar.

Q Do you know how large that is in area, Camp Hopevale?

A I could not estimate, sir.

Q What did the Japanese find when they searched the huts?

A They found the missionaries in their huts.

Q Did they find any weapons?

A No, they didn't.

Q Did the missionaries offer any resistance to the Japanese when they went into Camp Hopevale?

A No, sir, they didn't.

Q When did you get to Camp Hopevale?

A We arrived at Camp Hopevale way back, December 18, 1943.

Q What happened when you arrived there?

A Upon reaching the place the group wherein I was was divided into small groups of about four or five men and searched the place. Camp Hopevale was surrounded by the Japanese soldiers wherein I went with.

Q How many were in the group that went to Camp Hopevale?

A Around two hundred to two hundred and fifty went inside the camp proper.

Q Was it members of this same group that surrounded the camp?

A Yes, sir.

Q What type of a camp was it?

A Well, it was made of small huts wherein these poor missionaries stayed.

Q The homes of the missionaries?

A Yes, sir.

Q Did you see an altar constructed out in this area?

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A No, they didn't.

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A No, sir, they didn't.

Q When did you get to Camp Hopevale?

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A Yes, sir.

Q What type of a camp was it?

A Well, it was made of small huts wherein these poor missionaries stayed.

Q The homes of the missionaries?

A Yes, sir.

Q Did you see an altar constructed out in this area?

A When we entered the camp I didn't see the altar, but when we stepped out we saw the altar.

Q Do you know how large that is in area, Camp Hopevale?

A I could not estimate, sir.

Q What did the Japanese find when they searched the huts?

A They found the missionaries in their huts.

Q Did they find any weapons?

A No, they didn't.

Q Did the missionaries offer any resistance to the Japanese when they went into Camp Hopevale?

A No, sir, they didn't.

Q Was there any exchange of shots or any other type of fighting when the Japanese went into Camp Hopevale?

A There was not any of the kind, sir.

Q What ones of the missionaries did you see taken by the Japanese?

A I beg your pardon, sir?

CAPTAIN YARD: Strike the question. I will rephrase it.

Q Did you see the Japanese take the missionaries from their huts?

A Yes, sir.

Q Who did you see taken?

A Mrs. Covell, Mr. Covell, and Dr. Rose.

Q Is that the only three that you saw taken?

A Yes, sir.

Q Did you subsequently see the other missionaries there rounded up?

A Yes, sir, and they were grouped.

Q And how many altogether did you see in the group?

A So far as I could remember, there is 16.

Q Do you know the names of all of those persons?

A I don't know their names; I only knew of four.

Q Have you given the names of only those that you knew?

A Yes, sir.

Q What time of the day was this when you entered Camp Hopevale?

A When I entered Camp Hopevale it was around nine o'clock in the morning.

Q And when were the missionaries rounded up?

A They were rounded up in the village, in that camp.

Q About what time of the day?

A The very morning that we entered, the place was rounded up.

Q What was done with the missionaries after they were rounded up?

A When they were rounded up they were roped and then placed in the different houses which was a little bit bigger there than huts.

Q Were they all placed in one house?

A They were placed in one house.

Q What happened to them then?

A What happened to what, sir?

Q To the missionaries.

A They were killed later on.

Q They were killed later on. Do you know whether or not they were questioned?

A I don't know.

Q At the time they were rounded up did you recognize any of the Japanese who were present?

A Yes, sir.

Q Will you name them, please.

A They were Matsuzaki, Kumai, Otsuka, Captain Watanabe, Lieutenant Fujii, Kuwano --- I think that's all I can remember.

Q I hand you Prosecution's Exhibit No. 4, being a photograph, and ask you to state whose picture it is, if you can?

A This is Otsuka, sir.

Q Otsuka?

A Yes, sir.

CAPTAIN YARD: Let the record show that the photograph is that of Fujii.

Q Did you see this man present at Camp Hopevale?

A I did not see Fujii in that place, sir.

Q Did you see the man whose picture is here present?

A I only heard of Fujii --- I have only heard that Fujii was present in that town but I did not see his face.

Q Who told you that Fujii was present?

A My companions.

Q I show you Prosecution's Exhibit 5, being a photograph, and ask you to state whose picture that is, if you can.

A This is Otsuka.

Q Is that Otsuka?

A Yes, sir.

Q Are you sure that's Otsuka?

A I am very sure, sir.

Q When did you first see this man?

A He was with our group in that place.

Q In what place?

A Camp Hopevale.

Q Camp Hopevale?

A Yes.

Q And you saw this man at Camp Hopevale?

A Yes, sir.

Q You are sure?

A Yes, sir.

Q I hand you Prosecution's Exhibit No. 7, being a photograph, and ask you to state whose picture that is.

A That is Kumai, sir.

Q Did you see this man at Camp Hopevale?

A Yes, sir.

Q Was he with your group throughout the expedition?

A Yes, sir.

Q I hand you Prosecution's Exhibit No. 9, being a photograph, and ask you whose picture it is.

A Matsuzaki, sir.

Q And was he present at Camp Hopevale?

A Yes, sir.

Q Was he present with your group throughout the expedition?

A Yes, sir.

Q I hand you Prosecution's Exhibit No. 11, being a picture, and ask you whose picture that is.

A Kuwano, sir.

Q Was he present at Camp Hopevale?

A Yes, sir.

Q Was he present when the missionaries were rounded up?

A Yes, sir.

Q Did you see the others when the missionaries were being rounded up?

A The others ---

Q The other Japanese whose picture I showed you.

A Yes, sir.

Q That is, with the exception of Fujii.

A Yes, sir. I did not see Fujii in that place, sir.

Q When were the missionaries killed?

A They were killed on the 20th of December, 1943.

Q Did you witness the execution of any of the missionaries?

A I saw Captain Watanabe draw his sword while Mrs. Covell was hand-back tied near him.

Q All right. Will you tell us more about that, what happened?

A From the place wherein they were grouped they were taken one by one to that small hut and then in that place, in that small hut, Captain Watanabe was there. Then, too, I was there myself. I saw Captain Watanabe draw his sword near Mrs. Covell who was then hand-back tied, and upon witnessing such act I turned my face. I heard Mrs. Covell scream.

Q Did you hear Mrs. Covell plead with Captain Watanabe?

A Yes, sir.

Q What did she ---

A She pleaded in the Japanese language. She said, "Why will you kill us all; we are missionaries."

Q Did Captain Watanabe say anything?

A No, sir.

Q Did you see Mrs. Covell's body after that?

A No, sir.

Q Did you see any of the other bodies?

A After we left the camp we saw the bodies which were burned.

Q Which were burned.

A Yes, sir.

Q Did you see any of the other missionaries being brought up to this place where Mrs. Covell was killed?

A I didn't, sir.

Q What did you do when Captain Watanabe drew his sword?

A I went away from that spot.

Q Did anyone ever tell you what happened to the other persons, how they met their death?

A No, sir.

Q None of the other members of the party.

A No, sir.

Q When you were leaving you say you saw the bodies?

A Yes, sir.

Q Where was this?

A Because when we left the place we passed by that spot. I saw the skulls and then the burned bodies.

Q Could you tell whether or not the persons whose bodies you saw were beheaded?

A No, sir, I can't tell.

Q Were you able to recognize any of the bodies?

A I wasn't able to recognize, sir.

Q Did you ever hear anyone else in the party, or in your group, say how the killings tookplace?

A No, sir.

Q Did you know how many persons were killed there?

A Sixteen American missionaries were killed there, sir.

Q How do you know there were sixteen?

A Because they were gathered and then I counted them in the house wherein they grouped. And I know that they were all killed.

Q How do you know they were all killed?

A I knew that they were all killed because they were all left there, and when we left the place nobody was taken with us.

Q Do you know whether any of these missionaries escaped?

A No, sir.

Q Do you know whether or not there were any persons in addition to the missionaries who were at Camp Hopevale when the Japanese went in?

A I don't know of any more, sir.

Q Where did you go after you left Camp Hopevale?

A After we left Camp Hopevale we proceeded to Iloilo City.

Q Who was in charge of the group at that time?

A Captain Watanabe, sir.

Q How large was the group?

A It was around 400 to 500.

Q On your return to Iloilo City were you at any time attacked or molested by the civilians?

A No, sir.

Q When you were going to Camp Hopevale were you attacked or molested by the civilians?

A No, sir.

Q Did you count the number of bodies which you say you saw as you left Camp Hopevale?

A No, sir.

CAPTAIN YARD: You may cross-examine.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Where did this expedition start?

A This expedition started from Iloilo City.

Q On what date?

A October 17, 1943.

Q What route, then, did you follow in getting back into Tapaz and Camp Hopevale?

A Beg your pardon, sir?

Q Where had you been immediately before you came to Camp Hopevale?

A We had been in Iloilo City, and then we landed in Batan and then proceeded to --- we passed by Altavas, Balete, and then later on proceeded to Tapaz.

Q Did you start out with the expedition that left?

A Yes, sir.

Q Did it go by water from Iloilo to Batan?

A Yes, sir.

Q When did you arrive in Batan?

A I don't remember the exact date, sir, but it was on the same month of October 1943.

Q What barrios, then, were you in between October 18 and December 18, when you went on to this expedition then at Camp Hopevale?

A We passed Batan, Altavas, Balete, and then Libacao and Tapaz.

Q Were you with Captain Kengo Watanabe during all of that time?

A It was Captain Watanabe all of that time.

Q After you left Camp Hopevale what route did you follow to get back to Iloilo City?

A I don't exactly remember, sir, but when we left the place all I know that we reached Iloilo City.

Q Did you go back up to Batan or [redacted] Washington and take a water route back to Iloilo City?

A No, sir, we took the mountain trail, sir.

Q Did you cut across country, then?

A Yes, sir.

Q Into Iloilo City?

A We cross-country, sir, up to Iloilo City.

Q Do you know whether or not you went back to Passi on

the return trip to Iloilo?

A No, sir.

Q Did you leave Camp Hopevale on December 28?

A I don't exactly remember what date we left Camp Hopevale, sir.

Q You say you arrived there on December 18.

A Eighteenth.

Q How many days were you in Camp Hopevale?

A We stayed there for three days: 18th, 19th, 20 --- we left the place the 20th, sir.

Q When did you arrive back in Iloilo City?

A I don't exactly remember, sir. That was the same month.

Q It was around the middle of December or the latter part of December?

A Latter part of December.

Q While you were at Camp Hopevale do you know whether or not any units of the 63rd Regiment Guerrilla Army under Colonel Dator did any fighting?

A No, sir.

Q You are sure of that?

A Pardon me, sir. There was a certain lieutenant who fired against the group of Captain Watanabe, sir, but I was far from that group.

Q How many men would you say were in the guerrilla party with this lieutenant?

A I don't know, sir.

Q Did you ever hear how many there might have been?

A Beg your pardon, sir?

Q Did you ever hear how many there may have been?

A No, sir, I did not give interest to that.

Q How long did the fighting last?

A For a few minutes or less, sir. It was not the fighting, sir. It was more of firing only.

Q Were there any Japanese killed?

A No, sir.

Q On these expeditions did you ever carry a rifle?

A Beg your pardon, sir?

Q Did you carry a rifle or any other weapon on these expeditions?

A Yes, sir.

Q Did you ever use it?

A No, sir.

Q Did you ever use it at any time between October and the time you were here in December?

A I don't get you, sir.

Q Did you ever fire your rifle from the time you left Iloilo City on October 17 until the time that you arrived back there in the latter part of December?

A I never fired that, sir. That has never been fired by me, sir.

Q Were you with Captain Watanabe or any of his group when they went up in the mountains looking for a wireless set?

A I didn't get you clearly, sir.

LIEUTENANT MC CULLOUGH: Will the reporter read the last question back.

(The last question was read by the reporter.)

A I was with that group, sir.

Q Will you tell whether or not they did find a wireless set on that search.

A I don't know whether they were looking for a wireless, sir, but I was with that group only.

Q Did you see any wireless sets or wireless equipment at any time that you were on this expedition?

A No, sir.

Q You are sure of that?

A Yes.

Q Did you ever hear about any wireless equipment being seized on that expedition?

A No, sir.

Q I ask you if you have ever seen any time during that expedition the Japanese soldier standing here at the table?

A No, sir.

LIEUTENANT MC CULLOUGH: Let the record show that the man I referred to was General Kono.

That's all.

COLONEL HAMBY: Redirect-examination by the prosecution?

CAPTAIN YARD: None, sir.

COLONEL HAMBY: By the Commission? There appear to be none. Witness excused.

(Witness excused.)

COLONEL HAMBY: The Commission will take a short recess.

(Short recess.)

COLONEL HAMBY: The Commission is now in session.

ENGRACIO C. ALORA

a witness for the prosecution, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY CAPTAIN YARD:

Q State your name.

A Engracio C. Alora.

Q What is your age?

A 46.

Q Your nationality?

A Filipino.

Q What is your present address?

A Central Philippine College, Iloilo City.

Q What is your occupation?

A Minister of the Gospel.

Q Of what church?

A Baptist Church.

Q Do you have any official position in addition to that in the Baptist Church?

A Yes, sir. I am General Secretary of the Convention of Philippine Baptist Churches, Incorporated.

Q Do you instruct at the Central Philippine College?

A Yes, sir, I also am acting Dean of the College of Theology of the same college.

Q During December of 1943 where did you live?

A I lived on my farm in Lambanao.

Q Is that near what is known as Camp Hopevale?

A It's about fifteen kilometers to the south.

Q What sort of a place was Camp Hopevale?

A It's a ravine. It's enclosed by mountain ridges. It's a sort of ravine.

Q What use was made of this area?

A It was used by some of the mountaineers as "caingin," that is, a farm.

Q Was there a settlement of missionaries and other Americans at Camp Hopevale?

A Yes, sir.

Q Were you acquainted with those Americans who resided there?

A Yes, sir.

Q Did you have occasion to go to Camp Hopevale?

A Several times I visited them before they were killed.

Q Were there missionaries among those Americans?

A Yes, sir.

Q They were connected with what church?

A Of the American Baptist Mission Society of the Philippines.

Q Do you know the names --

A Yes, sir.

Q -- of the missionaries and their families who were located there?

A Yes, sir.

CAPTAIN YARD: May it please the Commission, there are a number of names here, but we believe and we suggest that it would be well to have the names of these persons incorporated into this record, if we may have the Commission's indulgence to do this.

COLONEL HAMBY: Proceed.

Q Will you state to the Commission the names of those persons.

A They were Dr. and Mrs. Francis H. Rose, Dr. and Mrs. Frederic W. Meyer, Professor and Mrs. James Covell, Rev. and Mrs. Earle F. Rounds, and their nine-year-old son.

Q Do you know what his name was?

A Douglas.

Q Who else, please?

A Miss Dorothy A. Dowell, Miss Signe Erickson, and Miss Jennie Adams.

Q That is twelve, is that correct?

A It is twelve including the little boy.

Q Were there other Americans who lived at Camp Hopevale?

A Yes, sir.

Q Do you know their names?

A You mean those that died only?

Q Well, just the ones that were in the massacre.

A Yes. There were Mr. and Mrs. Mark Clardy and their two sons, Johnny and Terry Clardy. And there was another man there. I did not see him, but he was there with the group and he was killed, by the name of Lieutenant King.

Q Was that Albert King?

A I am not sure of his first name but I heard only the name King.

Q In what army was Lieutenant King.

A He was supposed to be with the guerrilla.

Q Did you hear about the Japanese penetration into Camp Hopevale?

A I heard about it when I discovered the death of the Americans.

Q When did you discover that?

A May I tell the story?

Q Yes, go right ahead.

A About the 27th of December we were informed in that vicinity where I was evacuating that the Japanese soldiers would come to our place on a "penetration," they call it, penetration. And we were informed that they were going to kill everybody that they would find in that vicinity. So I decided that if that was true I would run away with my family, and wanted to join with my colleagues, who were in Hopevale then. So I decided to go away from that place where I was evacuating. Upon arriving in a place in the town of Calinog --

Q How do you spell that?

A C-a-l-i-n-o-g. I met a friend of mine who is a doctor in dentistry, and because it was already late in the afternoon we decided with my family to stay in his home.

During that night secretly I was informed by my dentist friend that my missionary friends and colleagues were massacred by the Japanese who went up to Hopevale. And of course we were very much sorry about the incident. But I was warned by this doctor friend never to talk about the death of those Americans because there were so many people around whom we did know whether they were spies of the Japanese. So we just kept our mouths mum.

Q Just a moment. Did he tell you when the massacre had taken place?

A Yes, sir.

Q When was that?

A He told me that the Americans were killed in the afternoon of December 20, 1943, somewhere about between three and five in the afternoon.

Q Will you go ahead with your story, please.

A So we were kind of scared, so we decided to stay with that family for awhile. But I felt that it was my moral obligation to find out what really happened to those American missionaries. So finally, about two weeks after, when I felt that it was safe for us to go up, I decided to go up farther to the barrio Tapaz -- that is about three kilometers from Capipunan.

Q Did you go, then, to Camp Hopevale?

A It was then that I contacted the local minister from the church there in Capipunan, who was also my, well, one of those pastors who belong in our denomination over whom I had direct supervision. And he told me the same story. And so, without taking much time, several days after that he and I decided that we would sneak into the camp secretly with one trusted person. Our motive was to go into the camp and, if possible,

we would gather the bones of those missionaries and hide them. But, of course, there were rumors that there were still Japanese spies around, so we were very careful.

One morning, very early, we decided to go up to the camp without anybody's knowing our plans of going to the mountains. When we got there this pastor and the man who was carrying a sack, into which we were going to put the skulls and the bones, arrived there. It was yet early in the morning and we saw those bones.

Q All right. Now, when you get into Camp Hopevale what had happened to the houses there?

A They were all burned to the ground.

Q Did you look over the area where the missionaries' homes had been?

A Yes, sir. And they were also burned, the Camp Hopevale was burned.

Q Were any of the Americans living or did you see any of them there?

A No more. We did not see anybody there.

Q Did you find any of the bodies?

A I did not see any flesh, but we saw only the skulls and the skeletons.

Q Where did you find the skulls and skeletons?

A We found the skulls and the skeletons in two places: in one place -- I would like to describe the place, I think, so you will understand.

There were two places. At first I was told that they were herded together in a place, a little valley, where they were herded that Sunday night, the 19th. And then the following day at three o'clock they were taken to two places: some were taken that way, and others were taken this way. They were

killed in two different places.

CAPTAIN YARD: The witness gesturing with his hands. Go right ahead, please. Where did you find the bones?

A I found some of the skulls and bones on that place between a clump of bamboo with some posts of the house burned and some of the skulls were partly burned. Some of the bones, skeletons, were burned, entirely burned.

Q Did you know whose house that was?

A I was told, upon inquiry, that this was the house that belonged to the mountaineers who were then living there as "caingineros," that is, those that worked on the "caingin."

Q Were you able to identify any of the skeletons or skulls which you found at that mountaineer's house?

A Yes, sir, I did identify some of them, those that were not totally burned. I discovered, among the skulls there, I discovered the skull of Miss Erickson.

Q How did you know it was Miss Erickson's skull?

A I know it belonged to her because Miss Erickson was working with us, of course, for a long time in the college, and she had a protruding jaw, jawbone, and I discovered none of the skulls there had a protruding jaw. Of course, upon questioning of the mountaineers, they said that almost all of the people were taken to that spot and upon investigation I discovered that I also found there the bones or skull of Frederic W. Meyer, director of the mission who is in Capiz.--

Q How did you identify --

A -- which had fillings, which had gold teeth, and I know that because I was associated with Dr. Meyer.

Q Were you able to identify any of the other skulls?

A I'm not quite sure except that I was told most of the women were massacred in that place. Now, if I go to another place I can continue with the story.

Q Yes, go ahead.

A And in the other place we were informed that such men as Dr. Rose, Reverend Rounds, Professor Covell were taken to this other place and I discovered those skulls partly burned in those places there.

Q How were you able to identify those skulls with the men whom you have just mentioned?

A One skull, of course, did not have the teeth. Dr. Rose was wearing false teeth, and we found the jawbone without teeth, and that convinced me that it could not be other than Dr. Rose's jawbone.

Q Were you able to identify any of the others?

A Well, we just concluded that since we could not find the skulls at this other place, and found them there, we concluded that this must have been the skulls of those men.

Q How many skulls did you find there?

A As I said in the beginning, several of the skulls were mostly burned, and others were partly burned, and one or two had only the charred part of it. At this other place they were practically burned. I think I can explain that, too.

This other place, the house was much bigger than this other place that I was talking about, where the women were burned. And there were more people burned at that place there than on this other side (indicating), so I concluded that since there were few people here and the house was bigger, the fire consumed the bodies. As a matter of fact, we did not see much of the little bones, the ribs, or the other bones. We could not get

together. But the skulls we got; we were able to get.

Q Did you find the skulls that you identified as skulls of the Clardy boys?

A No, we could not find the skulls of the Clardy boys. The way I identified it was: I find two tags, metal tags, with the names of Johnny and Terry on them, a mark, Consolidated Mines, Masbate. Unfortunately, those tags were taken by Captain Friedell, Mission Secretary of the Northern Baptist Convention of the United States, to show to the relatives of Mr. and Mrs. Clardy, souvenirs.

Q Were those tags found with any bones?

A Yes, they were found among the bones.

Q To get back to my other question, how many skulls were you finally able to get?

A I gathered together nine skulls.

Q Did you find anything else in the ruins that would identify the bones as being one of the persons that you had known there before?

A Besides the skulls, you mean?

Q Yes.

A No, I could not say so.

Q Did you find the truss of --

A Yes, that was a truss that was supposed to be worn by Dr. Frederic Meyer, who had hernia trouble, and that was made for him by a certain teacher of Central Philippine College who knew how to manufacture such things to help Dr. Meyer's infirmity, and it was found at the place where I discovered the skull of Dr. Meyer.

Q Did you find the truss?

A Yes, sir, I found the truss.

Q Did you find it with bones? Was it found with bones?

A Yes, sir, it was found with the bones.

Q I hand you a photograph that has been marked for the purpose of identification as Prosecution's Exhibit No. 17 and ask you to identify it if you can.

A This bone here in the middle, I think --

Q Just a moment, please. Will you tell me what this is a photograph of?

A This is a photograph of the bones that we gathered and are now kept in a little church in the mountains.

Q Who appears in this photograph?

A The man to the right is the local pastor of the church,

and I myself on the left.

Q This photograph contains the --

A -- photograph --

Q -- of several skulls, is that right?

A It has five skulls here. They were badly burned skulls, but we did not care to put that on the picture.

Q And beginning at the right, and to the left --

A Beginning from the right, we supposed, or are convinced, that this skull belongs to Mrs. Rose, this belongs to Miss Erickson --

Q That is the next one?

A The next one. The other one belongs to Dr. Meyer.

Q That is the one in the center?

A This one we cannot be sure; it was badly damaged. This was, we think, that of Miss Dowell (indicating).

CAPTAIN YARD: The latter remarks by the witness concerning the skulls; He began with the skull to the right and went to the left of the photograph.

Prosecution offers in evidence Prosecution's Exhibit 17, being the photograph just identified by the witness.

LIEUTENANT MC CULLOUGH: No objection.

COLONEL HAMBY: It is admitted.

(Prosecution's Exhibit No. 17 was received in evidence.)

Q Did you identify a body, or remains, as that of Lieutenant King's?

A Among the skulls that we discovered back of the supposed headquarters of the Japanese, we discovered two skulls quite different from the other skulls that we discovered there -- bigger with long bones of the nose. And we tried to ascertain

by asking questions of the mountaineers and they told us that Lieutenant King and Mr. Clardy were not killed with the missionaries but they were killed later on and killed back of that house.

Q So, from this information which you received, those two skulls are Lieutenant King's and Mr. Clardy's?

A Besides that, we were also able to say that one of the skulls was Mr. King's because someone described Mr. King's clothing as this native fabric, abaca, and we discovered with the skulls there that there were parts of the cloth that he wore as short pants.

Q Have you revisited Camp Hopevale since the time that you found the bodies?

A Yes, sir, I revisited that place.

Q To the present time have you, of your own knowledge, or from what you have heard from someone else, ever learned that any of these persons whom you have named has been seen alive any place?

A None of them has ever been reported alive.

Q Have you ever heard that any Americans answering their descriptions were seen elsewhere?

A No, sir.

Q And from the information which you have received and your identification of the remains are you satisfied that those remains which you found were those of the missionaries and other Americans whom you named here earlier?

A Yes, sir.

CAPTAIN YARD: You may cross-examine.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Do you actually know who killed any of the persons that you have testified about?

A No, sir.

LIEUTENANT MC CULLOUGH: That's all.

COLONEL HAMBY: Questions by the Commission? There appear to be none.

The witness is excused.

(Witness excused.)

CAPTAIN YARD: May it please the Commission, the witness whose testimony relates to Specification 18, which we did not hear yesterday, is now present. At this time we call Leopoldo Ardemil, whose testimony will refer to Specification 18.

LEOPOLDO ARDEMIL

a witness for the prosecution, was duly sworn and testified as follows through Interpreters Villaluz, Lagdameo, and Genoves:

DIRECT EXAMINATION

BY LIEUTENANT SHEPHERD:

Q What is your name?

A Leopoldo Ardemil.

Q And how old are you?

A 28.

Q Are you a Filipino?

A Yes.

Q Where do you live?

A Barrio Saraita.

Q During the Japanese occupation of Panay Island were you at any time captured by the Japanese?

A Yes, I was caught.

Q What was the approximate date that you were captured by the Japanese?

A September 30, 1943.

Q Where were you living at the time you were captured by the Japanese?

A Sitio Cadagmayan, Pilar, Iloilo Province.

Q How many other persons were captured by the Japanese along with you?

A More or less thirty-six.

Q And approximately how many Japanese were in the group of soldiers that captured you?

A Eighty-two.

Q After you and the other persons were captured did the Japanese question you?

A Yes.

Q What questions did they ask you?

A They asked us if in this place the Army lives.

Q And did you answer all the questions that the Japanese asked you?

A I answered some; I did not answer the others.

Q What did the Japanese do to you when you didn't answer the questions?

A They beat us.

Q What did the Japanese beat you with?

A A piece of wood.

Q Do you know the name of the Japanese that beat you?

A Colonel Watanabe.

Q I hand you Prosecution's Exhibit No. 6 and ask you whose picture it is.

A Colonel Watanabe.

Q And is this a picture of the man who beat you?

A Yes.

Q Were others of the thirty-six people gathered together also questioned and beaten?

A Yes.

Q Were there any women in the group of people captured?

A Yes.

Q What happened after the questioning was finished?

A They were killed.

Q Would you describe to the Commission the manner in which these people were killed.

A Some were stabbed with bayonets and some were hacked with sabers.

Q Were they tied at the time of their execution?

A Yes.

Q Were these people killed standing together in a group or were they led away one by one?

A They were taken one by one and killed.

Q How many did you actually see killed?

A Thirty-six.

Q When it was your turn what happened to you?

A I jumped over a cliff to the water.

Q Had the people been taken up to the side of the cliff overlooking the water and been killed there?

A Yes.

Q When the Japanese took you to the edge of the cliff you jumped into the water and escaped, is that correct?

A Yes.

Q Did you return the following day and see the bodies of the victims?

A Yes.

Q Would you name the members of your immediate family whose bodies you saw?

A Lazaro Ardemil, my father; Justa Bertaso, mother; Aurora Santo, wife; Leopoldo Ardemil, Jr., my son; Lazaro Ardemil, my son; Milenda Ardemil, my daughter; Florencio Ardemil, my brother; Lucena Ardemil, my elder sister; that's all.

Q Did you bury the bodies of these people after you returned?

A No.

Q Why didn't you bury their bodies?

A I was alone. There were no other people besides me.

Q Were any of these people tried by the Japanese before they were killed?

A No.

Q How do you know the name of Colonel Watanabe? How did you learn it?

A Because when he investigated me he told me something like this: You tell the truth because the one investigating you is Colonel Watanabe. I am Colonel Watanabe.

Q Now, when you say "he," do you mean the interpreter that talked to you and gave you Colonel Watanabe's questions?

LIEUT.SHEPHERD: I will rephrase that question. Strike that.

Q Did Colonel Watanabe talk to you through an interpreter?

A There was an interpreter.

Q At the time these thirty-six people were killed were you a guerrilla?

A No.

Q But after these killings did you enter the guerrillas' service?

A Yes.

LIEUTENANT SHEPHERD: Your witness.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q How many people did you see killed altogether?

A Thirty-six.

Q Do you know who killed them?

A Yes.

Q Who was it?

A Colonel Watanabe and two of his men.

Q Do you know who the two men were?

A I don't know.

Q What was the date?

A 30 September 1943.

Q Were they killed within this barrio?

A Yes.

Q When did you first join the guerrilla organization?

A After the penetration.

Q What year and month did you join the guerrillas?

A I cannot remember.

Q Was it late in 1943?

A About that.

Q Were you a guerrilla clear up to the end of war?

A No.

Q When did you quit the guerrilla organization?

A I quit the guerrilla organization on the first processing, that is, after the first processing in May 15, 1945.

Q Who was your commanding officer while you were a guerrilla?

A Captain Gella.

Q How do you spell it?

A G-e-l-l-a.

Q Do you know who his commanding officer was?

A Major Muyco.

Q Was he a battalion commander?

A No.

Q What unit or organization were you attached to?

A District Quartermaster.

Q Where were your headquarters?

A Passi, Iloilo.

Q What division were you attached to?

A District Quartermaster.

Q How many guerrillas were in your quartermaster supply in that area?

A I don't know, I cannot remember.

Q Did you ever hear of Colonel Peralta?

A Yes.

Q Was he one of your commanding officers?

A Yes.

Q Did you ever participate in any engagements against the Japanese yourself in which you carried firearms?

A No.

Q Did you ever carry a firearm any time during occupation?

A No.

Q What was your rank?

A Private.

Q I ask you if you know who this man is standing beside me in the Japanese uniform.

A Colonel Watanabe.

Q Is this Colonel Watanabe? You are sure, now, that this is Colonel Watanabe standing here, is that correct?

A It is the one.

Q Are you just as sure this man is Colonel Watanabe as the rest of the things that you have testified about?

A Yes.

LIEUTENANT MC CULLOUGH: Let the record show that the Japanese officer who stood up was General Kono. I have finished cross-examination.

LIEUTENANT SHEPHERD: Has the Commission any questions?

COLONEL HAMBY: Questions by the Commission?

There appear to be n ne. Witness is excused unless you have any more questions?

LIEUTENANT SHEPHERD: Yes.

BY LIEUTENANT SHEPHERD:

Q I show you Prosecution's Exhibit No. 6 and ask you whose picture it is.

A Colonel Watanabe.

LIEUTENANT SHEPHERD: I ask the Commission to notice the marked resemblance between Colonel Watanabe and General Kono, who is --

LIEUTENANT MC CULLOUGH: To which I object for the reason that that is one of the things which comes within the province of the Commission itself to decide at the time the decision in this case is rendered.

COLONEL HAMBY: The objection is sustained.

LIEUTENANT SHEPHERD: At this time, if the Commission please, before the witness is excused I would like to clear up one minor error that was in the specification, which is the municipality and province noted. Specification 18 notes that this occurred at or near Sitio Cadagmayan. Now, it also says Sara, Iloilo. Actually, that should be Pilar, Capiz Province. Sitio Cadagmayan is correct. The municipality of Sara is incorrect, Sara should be stricken and substituted therefor should be Pilar.

LIEUTENANT MC CULLOUGH: No objection to that.

COLONEL HAMBY: So ordered.

LIEUTENANT SHEPHERD: The province of Iloilo should be stricken and substituted therefor should be the Province of Capiz.

COLONEL HAMBY: So ordered.

(Witness excused.)

LIEUTENANT SHEPHERD: Sir, do you desire to recess now or shall we call our next witness?

COLONEL HAMBY: The Commission will take a short recess.

(Short recess.)

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: Prosecution's next witness is Jose G. Tupas.

JOSE G. TUPAS

witness for the prosecution, was duly sworn and testified as follows:

LIEUTENANT MURPHY: This witness' testimony will be on Specification No. 37.

DIRECT EXAMINATION

BY LIEUTENANT MURPHY:

Q Will you please state your name.

A Jose G. Tupas.

Q And what is your age?

A Forty-seven years old.

Q And your nationality?

A Filipino.

Q What is your present address?

A Tigbauan, Province of Iloilo, Panay, Philippine Islands.

Q Is that on Panay Island?

A Yes, sir.

Q What is your occupation, Mr. Tupas?

A School teacher.

Q And where do you teach school?

A In the same municipality of Tigbauan, Iloilo, Panay, Philippine Islands.

Q During the Japanese occupation were you ever apprehended by members of the Imperial Japanese Army?

A Yes, sir.

Q When did that take place?

A It was on or about the 10th of August, 1943.

Q Where were you apprehended?

A I was apprehended in our barrio called Bolõcawe, about five kilometers from the town of Tigbauan.

Q Was anyone apprehended with you?

A Yes, sir.

Q Who else was apprehended with you?

A My whole family, that includes my wife and eight children.

Q Where were you taken?

A I was taken by the Japanese to the barrio Parara, where they were bivouacked.

Q Who was bivouacked there?

A The Japanese soldiers?

Q Could you estimate the number of Japanese soldiers who were bivouacked there?

A I think more or less there were around 200 of them.

Q Will you explain in your own words what happened when you were brought to this Japanese bivouac area.

A When I was taken to the Japanese bivouac area I found out that there were other civilians who were also captured. I think my rough estimate of the numbers -- there were about fifteen in all, as soon as I and my family were taken there and they started asking us some few questions; that is in the process of investigation. Then during the course of the investigation the Japanese used to torture those who are being investigated in case they found out that the answer to their questions were not as they expected. Now, of those groups that were investigated I noticed there was one in which the investigation was being conducted by certain Japanese named Sergeant Matsuzaki. There was a fellow by the name of Ango, last name, Tristeza. Because of his good body and of his age, I suppose that he might have been mistaken

by the Japanese to be a member of the guerrilla. So they tortured him. They had fire in front of that fellow and once in a while they would push him to the burning fire. I saw them take hold of the bayonet and make several drills in the temple of that Ango Tristeza.

Q Several what?

A Several drills. They bore holes in the temples, right temple. They also caused that fellow to fall to the ground with his face upward. Then they placed a sort of bamboo across his neck and have two Japanese step, one on each end, for the purpose of choking him. Now, the investigation, according to my estimate, lasted for about half an hour. They all caused those who had been investigated to be tied with their hands behind. Then after that I noticed that two Japanese were starting to gather those who had been temporarily tied and then retied them again with a piece of new string, new cord, as if they were a bunch of cattles. Afterwards they took those twenty-three men and three women, one of whom had a three-month-old child in her arms, to a place about twenty-five meters away from where I was standing. There the twenty-three men, three women, and the three-month-old child were executed by them.

Q What methods did the Japanese soldiers use to execute these twenty-eight people?

A According to what I have seen, most of them were hacked by the sumarai sword and some were also bayoneted.

Q Do you mean by the expression "hacked" that an attempt was made to behead them?

A Yes, they were all tied this way (demonstrating) and made to kneel and bend their heads, push their heads this way, and strike them with the sumarai sword on the back of

the neck.

Q Were the women also beheaded?

A Yes, sir.

Q Were some of the victims bayoneted as well as being beheaded?

A Yes, sir. Because some of those who were perhaps not instantly killed by the samurai sword, they bayoneted them to finish them.

Q You have mentioned that one woman, one of the victims, had a three-months'-old baby with her?

A Yes, sir.

Q Did you witness how the Japanese killed that baby?

A Yes, sir.

Q Will you explain, in your own words, how they went about it?

A Before the mother was killed, one of the soldiers snatched the baby from her arms, threw the baby into the air, and then caught the baby on the point of the bayonet.

Q You have mentioned a Sergeant Watanabe as being present at the investigation of the civilians.

A Yes, sir, but afterwards I identified him not to be having the rank of sergeant but a colonel --

Q Pardon me. Sergeant Matsuzaki?

A Yes, sir.

Q You have testified that a Sergeant Matsuzaki was present at the questioning. How did you know his name to be Sergeant Matsuzaki?

A I know him to be Sergeant Matsuzaki because in the group there happened to be one, a Filipino spy, who belonged to my town, who was my townmate from Tigbauan, and because he had been my pupil under me, he accorded me the best help

he could and told me about all the Japanese officials who were with the expedition.

Q Did this Sergeant Matsuzaki take an active part in the investigation of the victims?

A He did not directly take an active part.

Q He did not actively take part?

A Yes sir, he did not actively take part in the execution.

Q But in the investigation or torturing --

A Yes sir, he was the one.

Q He was the one who did what?

A The torturing in the investigation.

Q Did you recognize any other Japanese members of the group?

A Yes, sir.

Q Who else did you recognize?

A Colonel Watanabe.

Q How did you know it was Colonel Watanabe?

A Because I was told by a certain Filipino spy by the name of Pedro Villanueva, who was also my townmate and has been my pupil during his schooldays.

Q I show you a photograph which has been admitted into evidence as Prosecution's Exhibit No. 9 and ask you to identify the person pictured thereon.

A This is Sergeant Matsuzaki.

Q I show you a photograph which has been admitted into evidence as Prosecution's Exhibit No. 6 and ask you if you can identify the person pictured thereon.

A This is Colonel Watanabe.

Q Can you name any of the victims whom you saw killed by the Japanese?

A Yes, sir.

Q Will you state the names?

A Ango Tristeza, Umay Pula --

Q How old was he?

A That fellow was around fifty years old, I think, more or less. Rufino Mangala. Among the girls were --

Q Will you spell that last name?

A R-u-f-i-n-o M-a-n-g-a-l-a.

Q And how old was he?

A He was around fifty years old. Vicente Ledesma, about forty-five years old, more or less; Lulia Ledesma, about twenty-one years old; Mrs. Alejandro Tuvilla, the woman who had a three-month-old baby.

Q On the night of the killing of the twenty-eight, were you still held by the Japanese?

A Yes, sir.

Q Did you witness a formation of the Japanese soldiers that evening?

A Yes, sir.

Q Who appeared to be in charge of the Japanese soldiers?

A According to what I saw, soon after the Japanese have done the execution of those persons I have just named, a certain fellow whom I later recognized to be Colonel Watanabe ordered the formation of all the soldiers, to line them up, and as I seemed to understand -- although, of course, I cannot really understand the instructions he had given -- but I seemed to be convinced that the instruction was to the effect that patrols should be sent out to the different

directions, as I later found it to be that way. Immediately after those soldiers were given lectures by him in Japanese language, and soldiers went out and returned the following afternoon, taking with them another man by the name of Ramon Tolegida.

Q Do you mean to say he was brought into camp with them the next day?

A About three o'clock in the afternoon.

Q Did you later see him mistreated?

A Yes, sir.

Q Will you tell, in your own words, what you saw?

A When Ramon Tolegida was taken into the place where the Japanese were bivouacked he was questioned for about five minutes and later on he was taken to the place where Colonel Watanabe was resting and there he was clubbed to death on the head.

Q Did you recognize the Japanese soldiers who clubbed him to death?

A I did not know the Japanese soldier who clubbed him to death.

Q Earlier, you testified that Sergeant Matsuzaki did not take an active part in the beheading of the twenty-eight victims.

A Yes, sir.

Q Did he in any way lend a helping hand?

A Yes, sir, it was he who handed the samurai sword to the Japanese who did the execution of those twenty-six persons on the first day of my captivity.

Q Was Colonel Watanabe actually present at the execution of the twenty-eight.

A He was present in the camp but he was not there in the place where the execution took place.

Q About how far from Colonel Watanabe's area would you say the execution took place?

A I think it was about twenty-five meters, more or less.

Q Was Colonel Watanabe present at the investigation or interrogation of these people?

A Yes, sir.

Q Before they were executed?

A Yes, sir.

Q How many days were you and your family held prisoners by the Japanese?

A We were captured on the afternoon of August 10. We were made to stay in the hivouac area guarded by the Japanese, around the eleventh, the twelfth, and then we were released on the thirteenth at about ten o'clock in the morning.

Q Why were you released?

A I could not exactly understand why I was released, but as I began to figure out it was really providential, perhaps with the aid of that Filipino spy.

Q After you were released, did you return to Tigbauan?

A At first we followed the instructions because they said that they [redacted], including all the other prisoners that were not executed, on condition that we will spread the propaganda or tell the other people in

the hills to come down and surrender, especially the town mayor; otherwise, they will all liquidate the entire inhabitants of the town of Tigbauan.

Q Did the mayor surrender the town?

A Through the insistence of the people, after many killings have been committed in the different parts of the town, the mayor, town mayor, finally surrendered.

Q Were you later in a position to determine how many people were killed in the area around Tigbauan?

A Yes, sir.

Q By the Japanese on this three-day penetration?

A Yes, sir.

Q Will you explain how you happened to be in a position to know?

A During those days I was then working as an undercover a g e n t u n d e r the Confesor Government.

Q Soon after the surrender of the town and the mayor had given himself up, presented himself to the Japanese forces, I established my temporary residence at our farm approximately three kilometers outside of the town. Then two days after the surrender of the town, as chairman of the undercover agents stationed for the town, I summoned all the other fellows who were working with me to canvass the casualties of the town during those days of the Japanese penetration, during three days. After about one week, when all the returns of the reports came in, we consolidated the reports and all in all, during the three days of Japanese penetration, there were around seven hundred inhabitants of the town of Tigbauan that were liquidated.

Q Mr. Tupas, as to the twenty-nine persons whom you have testified seeing killed yourself, were those persons Filipinos?

A Yes, sir, all of them were Filipinos.

Q Were they given any trial to your knowledge?

A There was no such trial except a few questioning which was in the form of torturing whenever they want to exact something which they want to get from the person investigated.

Q Did the victims have any arms with them, rifles or bolos?

A No, sir, no rifles whatsoever.

Q What?

A No arms whatsoever.

LIEUTENANT MURPHY: You may examine.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q When did you first start working for Confesor?

A I beg your pardon, sir? Oh, as soon as the war broke out the civil government of Confesor was established in the mountains and I, as a schoolteacher, was assigned to the work of campaigning for the civilians in order to keep up their morale so that they will not surrender to the Japanese despite the Japanese propaganda that the Americans would never return to the Philippines to redeem.

Q Were you there in Iloilo or in the surrounding vicinity when the Japanese first landed?

A No, sir.

Q Where were you?

A I was in my home town, Tigbauan.

Q That isn't far from the coast line, is it?

A It's a coast town.

Q It is a coast town?

A Yes, sir.

Q Did any of the Japanese forces land any place near Tigbauan?

A Not in Tigbauan.

Q Where did they land?

A They landed on one of the barrios of the next town called Oton.

Q How far was that from you?

A From Tigbauan?

Q Yes.

A I think the place where the Japanese landed is approximately seven kilometers from the place where I lived.

Q Do you know approximately how large a force they had at that time?

A I did not know because I was not there on the day of the landing. I ran away to the hills.

Q Was there any resistance given to the Japanese?

A There was no such resistance given to the Japanese.

Q Pardon?

A There was no resistance given to the Japanese.

Q Did you ever hear of a man by the name of Chavez?

A Chavez? Not only that I have heard, but I know him because he was our supervising teacher.

Q Was he a pretty good man down there?

A Yes, very good.

Q One of the leaders?

A I don't know whether he was one of the leaders at the time.

Q Do you know whether he led a force after the surrender in active opposition to the Japanese forces in that area at that time?

A I have heard of it but I have not seen any actual engagement between Colonel Chavez and the Japanese.

Q Do you know that there was a force of guerrillas working under Colonel Chavez?

A I have only heard of them.

Q Did you ever hear of the battle?

A No, sir.

Q Did you ever hear of an engagement --

A No, sir.

Q -- between Colonel Chavez and any Japanese?

A No, sir.

Q Never during the occupation?

A Never.

Q Did you ever hear of the 61st Division?

A I have not heard about the 61st Division.

Q Or the 63rd?

A No, because in fact the civil organization was entirely different from that of the guerrillas.

Q All right. Did you ever hear of the 61st or 63rd Regiment?

A No, sir.

Q Have you ever heard how large a force Colonel Chavez had under him?

A No, sir.

Q Were you ever in Colonel Chavez' headquarters at any time?

A Never.

Q Did you follow Confesor to his headquarters in the mountains?

A I have not been to his headquarters.

Q Have you ever contacted him at any other place?

A No, sir.

Q Have you ever talked to him?

A No, sir.

Q Have you ever talked to Colonel Chavez?

A No, sir.

Q Were you ever a guerrilla or a guerrilla supporter?

A No, sir.

Q Did you ever file a claim either against the Commonwealth of the Philippines or against the United States Government for back pay for any services that you rendered any time during the occupation?

A I have never filed.

Q Did you ever know a Captain Kengo Watanabe in the Japanese Army?

A I have not known him personally but I have heard of his name.

Q Have you ever had him pointed out to you or have you seen him at any time?

A No, sir.

Q Have you ever known of a Major Watanabe?

A No, I have not heard of a Major Watanabe.

Q When were you first contacted in regard to the testimony that you are giving now by any United States investigator,

either officer or enlisted man?

A What do you refer to?

Q Regarding the incident to which you have just testified, when was the first time you ever were contacted by any representative of the United States Army?

COLONEL HAMBY: Use the word, "questioned."

Q Or when were you questioned?

A Regarding the testimony which has to do with --

Q Regarding the incident to which you have just testified:

A I cannot exactly remember but I think it was around the month of November of 1945.

Q At that time in your statement that you gave to those investigators in answer to the questions which were asked you, did you state that it was Captain Kengo Watanabe who was responsible for the atrocities which you have just testified about?

A I am not very sure about that. What I have come to be sure is that when I found out the persons who were in Camp Nichols, I identified him to be the very fellow who gave the command on that incident in Parara on August 10 of 1943.

Q How were you able to do that at Camp Nichols?

A Because we were taken there for the purpose of identifying the war criminals against whom we are testifying now.

Q Were you shown pictures of these people before they were called out?

A No, sir.

Q At no time?

A No time at all.

Q The Captain Watanabe that you said you have heard of or may have seen, do you know whether or not it is the same person as the Colonel Watanabe that you have testified about, or are they two different people?

A I am not very sure but the difference lies in the fact that the Colonel Watanabe whom I am testifying against is the very fellow who gave a speech in the public market of Tigbauan when the town of Tigbauan surrendered, and he was the very fellow also who seems to have the high command, the command of the group that captured me on the tenth of August 1943.

Q When was this speech that you referred to made?

A I was captured on the tenth and then released on the thirteenth and the town surrendered on the following day; that was the fourteenth of August of 1943.

Q Who else was there?

A Many Japanese were there.

Q Were you able to recognize any of them?

A Except the two, Colonel Watanabe and Sergeant Matsuzaki.

Q Did you at any time ever see Sergeant Matsuzaki ever kill anyone?

A Ever kill anyone?

Q Yes.

A Never. In fact, I did not testify that he directly killed those persons in Parara.

Q Yes, but I am asking you now if you ever saw Sergeant Matsuzaki ever kill anyone any time during the occupation.

A No, sir.

Q You knew him quite well?

A Yes, sir.

Q When did you go to Nichols Field at the prisoner-of-war stockade to make the identification that you have talked about?

A I cannot exactly remember the date but it was within this month.

CAPTAIN YARD: Just a moment. I was present when this screening occurred. If the Commission so desires, I will be very glad to tell the Commission exactly what happened on that screening and when it took place, the methods that were employed, if you would care to have me do so.

LIEUTENANT MC CULLOUGH: Captain, I don't doubt your integrity for one minute but I prefer to have him testify rather than you on this particular identification.

COLONEL HAMBY: Proceed.

Q Had you ever seen any pictures of Colonel Watanabe prior to the time you went to Nichols Field?

A No, sir.

Q How was the Colonel Watanabe dressed that you saw out in front of these troops just before they were sent on this patrol which you described?

A How was he dressed? I cannot exactly remember how he was dressed but I think he was dressed in much the same way as that Japanese is now dressed, with exception of the fact that I could not see the bars that that fellow is wearing on the breast.

Q Did he wear boots?

A The white undershirt too.

Q Did you notice whether he had any insignia on his collar?

A I did not take care of finding out the insignia that he wore during that day; in fact, I was even afraid to look at him.

Q The twenty-six or twenty-eight people who were killed, would you give me that date again that that took place?

A The twenty-three men and the three women and the three-month-old baby were all killed on the afternoon of August 10.

Q Where was that?

A In the barrio of Parara, municipality of Tigbauan.

Q This all took place in that one barrio?

A Yes, sir.

Q I believe you testified about one other killing taking place?

A On the second day.

Q When did that take place, then? Where did it take place?

A In the same place as Parara.

Q And in the same barrio?

A Yes, sir, the same barrio.

LIEUTENANT MC CULLOUGH: That's all.

REDIRECT EXAMINATION

BY LIEUTENANT MURPHY:

Q Mr. Tupas, when you went to Nichols Field and visited the prisoner-of-war camp located near Nichols Field, approximately how many Japanese prisoners of war were lined up in front of you?

A According to my estimate there were not less than fifty Japanese who were lined up.

Q And among them did you pick out two individuals?

A Yes, sir.

Q And what were their names?

A Their names were Colonel Watanabe and Sergeant Matsuzaki.

LIEUTENANT MURPHY: That's all.

COLONEL HAMBY: Questions by the Commission?

EXAMINATION BY THE COMMISSION

BY COLONEL GOFF:

Q How many Japanese were present at this torture where twenty-eight were killed?

A In the place where --

Q The twenty-eight --

A -- were killed.

Q On August 10. How many Japanese?

A I beg your Honor, sir. Do you mean to say on the spot where the killing took place or in the place where they were?

Q In the immediate vicinity within the distance where they could be effectively used to force you to do things.

A The whole, around 200 of them.

Q About 200?

A Yes, sir.

COLONEL HAMBY: Any other questions? There appear to be none.

Witness is excused.

(Witness excused.)

CAPTAIN YARD: May it please the Commission, something has come up here that I believe should be mentioned to the Commission. I think it would be well to put it in the record. Several weeks ago when we had just completed a tentative draft of the specifications in this case we included

in the draft of the specifications the names of known Japanese who were present or participated in these incidents that are specified. The tentative draft was based upon affidavits which had been sent to us from Panay Island. In some of the cases the affidavits referred to Captain Watanabe. We had not yet talked with the witnesses themselves. That tentative draft was given to counsel for the defense with each specification, and included in that draft was every specification, and then some, under which this accused is standing charges. Included in each specification was the name of the Japanese involved. I want it mentioned here because it shows the amount of notice the accused has had as to who did these various acts.

Now, when we spoke with the witnesses and when the witnesses were taken out on the screening of the Japanese we then learned that some of the names in the affidavits were not correct, and changes were made and differences appear, as do occur, such as appear in the testimony of the last witness. I mention it because it does show the reason why defense is pursuing the method that it is in cross-examining these witnesses, and for the further reason that I want the record to show the advance notice that the accused has had in this case, the assistance that he has had in drawing up his case.

LIEUTENANT MC CULLOUGH: In answer to the prosecution and in fairness to the accused and the prosecution, they have been very kind in giving us certain information ahead of time. However, after we received some two or three weeks ago the proposed charges in this case, we went out and made an investigation and we found that when we were to go

to trial the charges and specifications were changed so much that they were hardly recognizable, except that General Kono was substituted in place of every perpetrator in that, and given command responsibility rather than being the perpetrator of the actual crime itself.

We were given, in addition to that, an admission against interest or confession, if you may call it that, of General Kono's, and a confession or an admission against interest of one or two other persons. I didn't want the prosecution -- and he has been very fair in this case -- either, to paint too rosy a picture to the Commission about how much the defense has had in the way of assistance from them on this case. We had to go out and make an entirely independent investigation, and our independent investigation which we did make, in some instances, didn't coincide with the prosecution's investigation, and as to those points I think that the real controversy comes up in this particular case. I don't think we should sit still here either and allow them to paint a rosy picture of how much assistance we have been given when, in fact, it didn't amount to that.

COLONEL HAMBY: The Commission will take cognizance of both the statements of the prosecution and the defense.

CAPTAIN YARD: Sir, the testimony of the next witness on direct examination will consume about ten to fifteen minutes' time. I understand this courtroom is to be used at about 1600 hours, is that correct, sir?

COLONEL HAMBY: That is my understanding.

CAPTAIN YARD: Do you desire that we call our next witness, then?

COLONEL HAMBY: I do not think it would be a good idea.

This Commission will adjourn and meet at 0830 hours, Saturday morning.

(The Commission adjourned at 1545 hours, 18 April 1946.)

Prosecution's Exhibit #17
U.S.A. vs Takeshi KONO
18 April 1946

(205J)

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Armed Forces
Western Pacific

UNITED STATFS OF AMERICA	
vs	
TAKESHI KONO	PUBLIC TRIAL

VOLUMF V

PAGES 449 TO 547

MANILA, P. I.

DATE: 20 April 1946

COPY NO.: 3

CERTIFICATION

This certifies that this volume is a part of the proceedings of the Military Commission appointed by Paragraph 21, Special Orders No. 85, Headquarters, United States Army Forces, Western Pacific, dated 12 April 1946, in the trial of the case of the United States of America v. Takeshi Kono.

Dated 7 May 1946

W. R. Hamby

WILLIAM R. HAMBY
Colonel, CAV
President of Commission

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

UNITED STATES OF AMERICA

vs

TAKESHI KONO

PUBLIC TRIAL

Court No. 2-B
High Commissioner's Residence
Manila, P. I.
20 April 1946

Met, pursuant to adjournment, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL WILLIAM R. HAMBY, CAV, President and Law Member
COLONEL JOHN L. GOFF, CAC
COLONEL JOSEPH H. WARREN, INF
LIEUTENANT COLONEL JOHN A. CHASE, (CMP) FA
CAPTAIN JACK ELLINGSON, CMP

APPEARANCES:

FOR THE PROSECUTION:

(AS PREVIOUSLY NOTED.)

FOR THE DEFENSE:

(AS PREVIOUSLY NOTED.)

INTERPRETERS FOR THE COMMISSION:

(AS PREVIOUSLY NOTED.)

REPORTERS FOR THE COMMISSION:

ARNOLD COHEN
WILLIAM COHEN

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P R O C E E D I N G S

The Commission convened, pursuant to adjournment, at 0830, 20 April 1946, at Court No. 2-B, High Commissioner's residence, Manila, P.I.

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: Sir, may the record show that the following members of the Commission are present: Colonel Hamby, Colonel Warren, Lieutenant Colonel Chase and Captain Ellingson; that the accused together with his defense counsel, Lieutenant McCullough, and his personal interpreter, and the members of the prosecution are present.

Prosecution calls as its next witness, Antonio Canag

ANTONIO CANAG

a witness for the prosecution, was duly sworn and testified through Interpreter Villaluz as follows:

LIEUTENANT SHEPHERD: If the Commission please, the testimony of this witness will relate to Specification 38.

DIRECT EXAMINATION

BY LIEUTENANT SHEPHERD:

Q What is your name?

A Antonio Canag.

Q And what is your age?

A 34.

Q Are you a Filipino?

A Filipino.

Q Where do you live?

A Barrio Pandan, Town of Leon.

Q During the Japanese occupation of Panay Island were you ever captured by the Japanese?

A Yes.

Q Could you give me the approximate date that this occurred?

A 12 August.

Q What year?

A 1943.

Q How many other civilians were captured by the Japanese with you?

A It was nine including a child of seven months - old.

Q Where were you captured by the Japanese?

A At barrio Buenavista.

Q Were all of the people captured with you members of your family?

A Yes.

Q How many Japanese would you estimate were in the group that captured you?

A Six.

Q After the Japanese caught you what did they do to you next?

A Two of us, our hands were tied behind our backs. After tying us behind our backs, we were brought down in front of the house. The women were also brought down where we were. Colonel Watanabe spoke something to the soldiers and the soldiers also spoke something in Japanese. I did not understand what they were talking about, but after that short conversation they had, they brought the women and my father upstairs, up the house. Five of them were brought up to the house. Among them was my father, Teodoro Canag, Maximo Cagod, Elasia Canag, Crescencia Canag, and Adela Canag. After that they were also bringing up my wife and Jose, my seven-months baby. They refused to go up. While they were leading them up to the house, forcing them to go up, my wife exclaimed, "Do you want to kill us!" and resisting to go up. The Japanese who were leading them pointed to Watanabe as if to say That is

the order of Watanabe. After pointing to Watanabe, that is, the Japanese soldier, Colonel Watanabe he nodded with approval. Then the Japanese soldier stabbed my wife and my son. After stabbing my wife, my wife slumped on the ground and my baby also fell on the ground. The Japanese kicked my wife; the Japanese kicked the child. The three Japanese upstairs, meanwhile, were continuing their killing, their stabbing of the five people whowwere already upstairs in the house. Cresencia Canag managed to jump through the window. When Cresencia Canag reached the ground, Colonel Watanabe, seeing her, pursued her and in that process let loose of me, because Watanabe was the one holding me at that time. Upon reaching Cresencia, Colonel Watanabe stabbed her, and when I saw that Cresencia slipped on the ground I ran away. I escaped through bushes and thicket, and I crawled below the hedges so that I could not be seen. Several of them were looking and searching for me. Meanwhile I was observing them where I was hiding and I noticed that they were talking Japanese and looking around. Apparently, seeing that they cannot locate me, they started to set afire the house. While the house was on fire some of the people in the house escaped and the Japanese pursued the people who escaped.

LIEUTENANT SHEPHERD (To interpreter): You translated that as "some of the people in the house escaped." It should have been "nearby house." Ask him that again. Just ask him this question: Did any of the people in your house escape while it was burning?

A The only ones thatescaped was me and the seven-months baby.

Q When they set your house on fire did people in nearby houses, or a nearby house, escape?

A At the place where I was hiding I saw some people escaping from the houses other than my house. But those houses were quite some distance from where I was.

Q Did you return to your house later?

A When I saw that the Japanese were pursuing the other people I stood up from where I was. Upon seeing that there were no Japanese around me, I went uphill on a little mount to look for some civilians to untie the strings that bind me, my hands. Somewhere around the top of the hill I met a man, civilian, who untied my hands. When I returned to the house, and upon reaching that place, I held my wife in my arms and I found her to be dead. I also saw my seven-months child. Then I started crying.

Q Was the seven-months-old child dead?

A Alive. While crying for my wife, I saw my child swimming in a pool of blood. I stood for some time there crying and a little later some civilians arrived and carried me back home.

Q Did you find the body of your sister, Cresoncia?.

A Yes.

Q Had she been beheaded?

A She was stabbed.

Q Would you give me the names and relationships of the members of your family that were killed in the house?

A Cirila Jaguren, my wife; Adela Canag, my daughter; Jose Canag, my son; Teodoro Canag, my father; Maximo Cagod, my mother; Cresoncia Canag, my sister; Elasia Canag, my sister; me and my seven-month-old son.

Q All of the members of your family except you and your seven-month-old child were killed by the Japanese at that time, is that correct?

A Seven were dead, only.

Q How did you learn the name of Colonel Watanabe?

A I know his name because when the Japanese soldier brought my wife up the house, the Japanese soldier spoke to somebody referring to Colonel Watanabe and Colonel Watanabe he nodded his head with approval.

Q Were any of your family that were killed by the Japanese given a trial before their death?

A No.

Q Were you or any members of your family guerrillas?

A No.

Q I hand you Prosecution's Exhibit 6 and ask you whose picture it is.

A Colonel Watanabe. This was the very fellow who was holding me.

Q You are sure of that?

A I am sure.

LIEUTENANT SHEPHERD: Your witness.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Did all of the killings that you have described take place in the barrio of Buenavista?

A Yes.

Q Did they all take place on August 12, 1943?

A Yes.

Q How many Japanese soldiers were around the house at the time this took place?

A Six including Colonel Watanabe.

Q Were they all armed?

A One with bayonet, four had rifles, Colonel Watanabe had saber.

Q Can you tell me how else Colonel Watanabe was dressed, that is, whether or not he wore boots or not?

A Yes, he had boots.

Q Were they boots similar to those worn by General Kono sitting here at the table? Will you take a look at his boots?

A I cannot remember because at that time I was so frightened that I cannot notice the details like that.

Q Do you remember the color of his uniform? Was it a khaki uniform similar to the one that I have on now or was it a Japanese uniform similar to that worn by the general here.

A I cannot remember.

Q Do you know why it was necessary for Colonel Watanabe to hold you when there were six Japanese officers there who were all armed?

A While three Japanese was inside the house and one Japanese

LIEUTENANT SHEPHERD: Your witness.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

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Q Do you remember the color of his uniform? Was it a khaki uniform similar to the one that I have on now or was it a Japanese uniform similar to that worn by the general here.

A I cannot remember.

Q Do you know why it was necessary for Colonel Watanabe to hold you when there were six Japanese officers there who were all armed?

A While three Japanese was inside the house and one Japanese

was leading my wife towards the house upstairs, one Japanese was nearby the house with only bayonet and Colonel Watanabe was holding the end of the rope that ties my hand behind my back.

Q Is your seven-month-old baby that was seven months old at that time, is she alive now, or he alive?

A He is alive.

Q I hand you Prosecution's Exhibit No. 3 and ask you to look at it carefully and ask you if you have ever seen that man.

A No.

Q I believe you said that one of the soldiers came up and called Colonel Watanabe by name, is that correct?

A Yes.

Q Are you sure they didn't call him Captain Watanabe?

A It was Colonel Watanabe.

Q Are you sure they didn't call him Major Watanabe?

A I heard colonel.

Q How do they say "colonel" in Japanese?

A I cannot understand the rest, but what I heard distinctly was Colonel Watanabe.

Q Was he speaking in Japanese?

A The rest were Japanese, but what I understood was "colonel."

Q What language was he speaking?

A In Japanese.

Q Do you understand Japanese yourself?

A No.

Q How, then, did you know that he was calling him Colonel Watanabe?

A I know because it was the soldier who was pointing at him and mentioning the words "Colonel Watanabe."

Q And he was talking in Japanese, is that correct?

A The rest of the conversation was in Japanese, but what I understood only were those two words, "Colonel Watanabe."

Q And was that in English?

A I don't know how to speak English.

LIEUTENANT MC CULLOUGH: That's all.

CAPTAIN YARD: That's all, sir.

COLONEL HAMBY: Questions by the Commission? There appear to be none. Witness excused.

(Witness excused.)

CAPTAIN YARD: Prosecution's next witness is Juan Cabalfin.

JUAN CABALFIN

a witness for the prosecution, was duly sworn and testified as follows through Interpreters Genoves and Villaluz:

DIRECT EXAMINATION

BY LIEUTENANT SHEPHERD:

Q What is your name?

A Juan Cabalfin.

Q What is your age?

A 30.

Q What is your nationality?

A Filipino.

Q Where do you live?

A Leon, Iloilo.

Q What barrio do you live in in Leon?

A Buenavista.

Q During the Japanese occupation of Panay Island, were you at any time captured by the Japanese?

A No.

Q Were you at any time arrested by the Japanese?

A No.

Q Were you at any time caught by Japanese soldiers?

A No, I was not caught.

Q During the Japanese occupation of Panay Island did you at any time see any atrocities by the Japanese against the civilians?

A I have not seen; I don't know.

Q During the Japanese occupation of Panay Island did you at any time see any people killed by the Japanese?

A I have not seen.

Q Did the Japanese ever come into your barrio Buenavista?

A The Japanese went there.

Q What was the approximate date or the time that they came into your barrio?

A August 12.

Q What year?

A 1943.

Q Why do you remember the date so well?

A I always remember it.

Q Why?

A Because of my family who were killed.

Q Did you see your family killed?

A I saw.

Q How many Japanese soldiers came into your barrio?

A In my estimate, not less than thirty.

Q After they came into your barrio what did they do?

A My house was surrounded.

Q What members of your family were in your house at that time?

A My wife and my two children.

Q Where were you?

A Behind the house, hiding.

Q Did the Japanese do anything to your wife and two children?

A They were brought downstairs and surrounded with the Japanese. It seems they were asking questions but I don't know what the questions were.

Q After the Japanese asked questions of your wife what did they do next?

A A little later some of the Japanese strolled on the streets.

Q What happened to your family?

A They were killed by the Japanese.

Q Did you see your family killed by the Japanese?

A I saw.

Q How did the Japanese kill your wife and children?

A They were bayoneted to death.

Q What were the ages of your two children?

A The eldest was one and a half years and the youngest was two weeks, not yet baptized.

Q How far were you standing from your wife and children when they were killed?

A More or less ten meters away from the house.

Q And you were hiding at that time, is that correct?

A Yes.

Q Did you bury the bodies of your family?

A I only buried the head and the bones.

Q What did the Japanese do to the bodies after they killed them?

A The Japanese burned the house. Since they were inside the house they were also burned.

Q Do you know the names of any of the Japanese that were present?

A Yes.

Q What was the name of any of the Japanese present?

A Watanabe.

Q How did you learn the name of Watanabe?

A Because a friend of mine informed me after the killing that the Japanese that did the killing at barrio Buenavista was Watanabe.

Q I hand you Prosecution's Exhibit No. 6 and ask you whose picture it is.

A This is Watanabe.

Q Is this the man who was present when your wife and two children were killed?

A Yes.

Q Are you sure of that?

A Yes.

LIEUTENANT SHEPHERD: Your witness.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q I hand you Prosecution's Exhibit No. 3 and ask you if you saw that man that day.

A I have not seen him.

Q Did you ever see him?

A No.

Q Do you know Antonio Canag?

A Yes.

Q Was your wife killed in his house?

A No.

Q Do you know about his wife's killing?

A I don't know.

Q How many people did you see killed?

A Only three.

Q How far were you from where these three people were killed?

A More or less ten meters.

Q Were they killed inside of the house?

A Yes.

Q What type of a house was it?

A Made of bamboos and cogon grass.

Q Were you on the outside of the house?

A Yes.

Q How, then, could you see on the inside of the house?

A Because the door was open, wide open.

Q Did you ever hear the name of Captain Watanabe?

A Yes, sir, only later on.

Q Do you know whether or not Captain Watanabe was in Buenavista on August 12?

A I don't know.

Q Did you hear that he was there on August 12?

A I have not heard.

Q Where did you hear the name Captain Watanabe?

A A week after they went to barrio Buenavista.

Q Do you mean by "they," the Japanese?

A After a week they have done the killing at Buenavista.

Q Isn't it a fact that they told you the man who was in charge of those Japanese was Captain Watanabe and not Colonel Watanabe?

A It was Colonel Watanabe.

Q How do you know that he was a colonel?

A I knew it, basing on what the others told me that he was Colonel Watanabe.

Q Who told you that?

A My friend.

Q Do you know whether or not there was more than one Watanabe in those thirty Japanese?

A I do not know.

Q But it is a fact that you did hear a Captain Watanabe was there at that time, is that correct?

A I do not know.

LIEUTENANT MC CULLOUGH: That's all, sir.

COLONEL HAMBY: Redirect?

LIEUTENANT SHEPHERD: Has the Commission any questions to ask the witness?

COLONEL HAMBY: There appear to be none. The witness is excused.

(Witness excused.)

The Commission will take a short recess.

(Short recess.)

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: Sir, the next witness is Felipe Tunay.

FELIPE TUNAY

a witness for the prosecution, was duly sworn and testified as follows through Interpreters Villaluz and Genoves:

LIEUTENANT SHEPHERD: If the Commission please, the testimony of this witness will be on Specification 39.

DIRECT EXAMINATION

BY LIEUTENANT SHEPHERD:

Q What is your name?

A Felipe Tunay.

Q And what is your age?

A 20.

Q Are you a Filipino?

A Yes.

Q And where do you live?

A Barrio Hamog.

Q Were you captured by the Japanese at barrio Hamog?

A Yes.

Q What was the approximate date that this occurred?

A 1944, April 10.

Q Would you tell the Commission in your own words just what happened at barrio Hamog.

A In 1944, April 10, the Japanese went up to barrio Hamog. When they arrived at that place they surrounded our house and caught us.

Q How many Japanese were in the group that came into barrio Hamog?

A More or less thirty.

Q How many civilians, to the best of your knowledge, did they capture at barrio Hamog?

A More or less ninety.

Q After you and the other civilians were captured what did the Japanese do with you?

A Some of them were questioned, others were not.

Q Did the Japanese tie your hands?

A Some of them were tied but I myself was not.

Q Were the hands of the men tied?

A Yes.

Q In the group captured were there men, women and children?

A Yes.

Q After some of the people were investigated where did the Japanese take the people?

A They were brought to two houses outside of the barrio.

Q And where were the approximately ninety people put by the Japanese?

A They were put in that barrio.

Q After the people were taken to the two houses what did the Japanese do with the people?

A Some of them were brought up the house and others were left downstairs, and then some of them were hacked.

Q Approximately how many were taken up into the house?

A About sixty.

Q Then were there about thirty people that were left downstairs outside the house?

A Yes.

Q Were the people that were left downstairs outside the house men only?

A Yes.

Q Was it the women, children, and the very young men that were taken upstairs?

A Yes.

Q Were you among the group that was taken up into the house?

A Yes.

Q Were you at any time after you were captured by the Japanese asked any questions by them?

A No.

Q What did the Japanese do with the sixty people that they took upstairs?

A They were killed one by one.

Q Were these sixty people, when they were taken upstairs, all put in one room?

A Yes.

Q And where were they killed?

A In that house, in that same house.

INTERPRETER GENOVES: The question please?

(The last question was read by the reporter.)

A In the same house where we were taken in.

Q What was the size of the room, the approximate size of the room into which the sixty people were put?

A The size of the room is three arms' length square.

Q And what was the approximate size of the room in which the people were taken to be killed?

A The same.

Q How were these two rooms joined?

A Yes, they are joined.

Q Was there a door between the two rooms?

A Yes, there was.

Q Was the door open or shut?

A Open.

Q Were you able to see from the room in which the sixty people were first taken directly into the room where the people were later killed?

A Yes.

Q How many people did you see killed?

A Forty.

Q Then were there approximately forty people killed before it was your turn to be taken to the other room?

A Yes.

Q Could you see the Japanese killing these people in the other room before you were taken into it?

A Yes.

Q How were they killing the people?

A They were beheaded and stabbed by bayonets.

Q Would you tell the Commission just what happened when the Japanese started to take you into the other room and took you into the other room where the people were killed?

A All those men were taken one by one to a room and beheaded until my turn came. When my turn came I slumped to the floor.

CAPTAIN YARD: Just a moment, please.

(Discussion ensued between prosecution counsel, out of hearing of the court.)

A (Continuing) After I was hacked I fell and became unconscious. When I awoke there was already fire.

Q As you entered the adjoining room were you struck on the neck by the Japanese?

A I was hacked.

Q Do you know what was used to strike you?

A A bolo.

Q Were you struck just one time?

A Three times.

Q When you regained consciousness did you notice many bodies piled around about you?

A Yes.

Q When you regained consciousness was the house on fire?

A Yes.

Q What did you do?

A I jumped off the house.

Q Did you see any Japanese as you escaped?from the house?

A No more. They were already far.

Q Did you see any bodies outside the house?

A Yes.

Q How many bodies would you estimate that you saw outside of the house?

A I did not notice because I was running.

Q In the group of thirty Japanese that captured you and other civilians, did you recognize any or know the names of any of them?

A Yes.

Q What was the name or names of the Japanese that you recognized?

A One only, it was Watanabe, Colonel.

Q How did you know the name of Colonel Watanabe?

A That was what the interpreter said.

Q When did the interpreter say this?

A That was when we were already upstairs when the interpreter said it.

Q I hand you Prosecution's Exhibit No. 6 and ask you whose picture it is.

A Colonel Watanabe.

Q Did you see this man present while the sixty people were being killed.

A Yes.

Q Did you see these people kill any of the sixty people?

A Yes.

Q And that is the only Japanese name that you heard at barrio Hamog, is that correct?

A Yes.

Q Was your mother killed at barrio Hamog by the Japanese?

A Yes.

Q What was her name?

A Maria Sabornido.

Q Was she killed among the sixty in the house?

A Yes.

Q Was your brother killed near the house?

A Yes.

Q What was his name?

A Sabino Tunay.

Q Did you later learn the number of people that were killed in the house and outside of the house by the Japanese?

A Yes.

Q And how did you learn this number?

A Because in the morning a lieutenant came and counted.

Q Was this the barrio lieutenant?

A Yes.

Q Did he tell you how many people he had found killed in and around the house?

A Yes.

Q How many were there?

A Eighty-six.

Q Did you help bury their bodies?

A No.

Q I show you a picture marked for the purpose of identification as Prosecution's Exhibit No. 18, and ask you whose picture it is.

A My picture.

Q And does it show the scars that you received from the bolo at barrio Hamog?

A Yes.

LIEUTENANT SHEPHERD: If the Commission please, we would like to offer into evidence Prosecution's Exhibit No. 18.

LIEUTENANT MC CULLOUGH: There are no objections.

COLONEL HAMBY: So ordered.

(Prosecution's Exhibit No. 18 was received in evidence.)

Q Will you stand and put your back to the Commission so that they can see the scars.

(Witness rises and exhibits back to Commission.)

LIEUTENANT SHEPHERD: Your witness.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Were all of the eighty-six people killed on the same day?

A Yes.

Q Was that all within this house or immediately around the house?

A Yes.

Q And was that within the barrio Hamog?

A Yes.

Q How far is the barrio Hamog from the City of Loon?

A More or less three or four kilometers.

Q How did you learn the rank of Colonel Watanabe?

A That was what the interpreter said.

Q What interpreter are you referring to?

A A Japanese; I did not know him.

Q What did he call him?

A I did not know him.

Q You may have misunderstood that question. I am referring to this Watanabe that you have been talking about. Withdraw that.

Who was the Japanese who told you his name was Colonel Watanabe?

A I did not know him.

Q What did he call him?

A Colonel Watanabe.

Q Did he speak to him in Japanese?

A The Japanese told us in Visayan that that man was Colonel Watanabe.

Q Are you sure that it wasn't Captain Watanabe?

A Yes.

Q Did you ever hear of the name of Captain Watanabe?

A No.

Q Whose house was this that the killing took place in?

A Julian Tubesa.

Q What type of house was it? Was it a nipa hut or was it made of boards?

A Nipa.

Q You described it as being three arms' length square, the room that they were taken into. What do you mean by "arms' length"?

A Three arms' lengths -- two arms' length square.

Q Is it as far as you can reach both hands in opposite directions; is that correct?

A Yes.

Q And do I understand you correctly that sixty people were placed in that room?

A Yes.

Q I ask you if you have ever seen this man at any time during the Japanese occupation, if you know.

A I did not see him.

LIEUTENANT MC CULLOUGH: Let the record show that the man I referred to is General Kono.

Q Now, when they took these sixty people in this room where was Colonel Watanabe that you referred to?

A He was downstairs.

Q Who actually did the killing?

A Watanabe, because when he came up the house they started killing.

Q Did he kill all sixty of them?

A Some of them, his soldiers.

Q How many soldiers were there that day?

A About thirty.

LIEUTENANT MC CULLOUGH: That's all, sir, on cross-examination.

LIEUTENANT SHEPHERD: Has the Commission any questions?

COLONEL HAMBY: There appear to be none. The witness is excused.

(Witness excused.)

CAPTAIN YARD: The next witness is Julian Tubesa.

JULIAN TUBESA

a witness for the prosecution, was duly sworn and testified as follows through Interpreters Villaluz and Genoves:

LIEUTENANT SHEPHERD: If the Commission please, the testimony of this witness will be under the same specification, 39.

DIRECT EXAMINATION

BY LIEUTENANT SHEPHERD:

Q What is your name?

A Julian Tubesa.

Q What is your age?

A 27.

Q Are you a Filipino?

A Yes.

Q Where do you live?

A Barrio Hamog, Town of Leon, Island of Panay.

Q Were you captured by the Japanese in barrio Hamog?

A Yes.

Q And approximately how many other civilians living in barrio Hamog were captured with you?

A More or less ninety civilians together with me.

Q About how many Japanese captured these civilians?

A Thirty Japanese.

Q Were you questioned by the Japanese?

A No.

Q Were some of the people questioned by the Japanese?

A Yes.

Q What did the Japanese do with the people?

A They were beaten.

Q That is those that had been questioned, is that correct?

A Yes.

Q Then after the questioning and beating where were the people taken by the Japanese?

A In our house.

Q They were taken to your house, is that correct?

A Yes.

Q How many rooms are in your house?

A Two.

Q How large are the rooms?

A Three arms' length on every room.

Q Are the two rooms right next to each other?

A Yes.

Q Is there a bridge between the two rooms?

A There was, made of boards.

Q Are there doorways at each end of the bridge?

A Yes.

Q Were some of the people captured, taken upstairs into your house?

A Yes.

Q Approximately how many people were taken upstairs?

A Sixty.

Q Were some of the people left downstairs outside of the house?

A Thirty people, including myself.

Q Do you know the name of any of the Japanese that were in the group that captured you?

A Only one.

Q What is that name?

A Colonel Watanabe.

Q Where did you learn the name of Colonel Watanabe?

A I knew the name of Colonel Watanabe because the boy of the Japanese told me so.

Q By "boy of the Japanese" do you mean a cargador?

A Yes.

Q Did he tell you that this was Colonel Watanabe or did he just say that it was Watanabe?

A Colonel Watanabe.

Q He told you this in Visayan, is that correct?

A Yes.

Q I hand you Prosecution's Exhibit No. 6 and ask you whose picture that is.

A Colonel Watanabe.

Q Did you see this Japanese present when the people were being questioned at barrio Hanog?

A Yes.

Q And did you see Colonel Watanabe very often during the period that you were captured by the Japanese?

A Yes.

Q How many Japanese soldiers were left downstairs to guard the thirty people there?

A I did not count.

Q Did you see the sixty people being led upstairs into the house?

A Yes.

Q Were there men, women, and children in this group?

A Yes.

Q Were they mostly women and children?

A Yes.

Q In the group of thirty that remained downstairs outside of the house, were they all men?

A Yes.

Q Did you see Colonel Watanabe speak to the Japanese guarding the thirty including yourself?

A Yes.

Q And did he speak in Japanese?

A Yes.

Q Could you understand what he said?

A I cannot understand but his boy told me.

Q Do you mean the same cargador that you have mentioned before?

A Yes.

Q What did he tell you that Colonel Watanabe had said?

A According to that cargador, Colonel Watanabe is commanding us to catch chickens and pigs.

Q Was that why he told you the name of Colonel Watanabe?

A Yes.

Q Later that day did you witness killing of civilians by the Japanese?

A I saw it under the house because I was also there.

Q How many people did you see killed under the house?

A Five people, six including myself.

Q Were the people killed one by one under the house?

A Yes, sir.

Q And there were five people killed before it was your turn, is that correct?

A Yes.

Q While these five people were being killed did you hear any noises from above you in the house?

A Yes, I heard.

Q What did you hear?

A I heard voices saying, "Don't kill us! Don't kill us, we are going to follow you."

Q What happened to you after the five people were killed downstairs?

A After the five people with me were killed, two Japanese took hold of me. They caused me to stretch my arms and sit down, and one of them took hold of a bolo and hacked my neck, in a stooping position.

Q How many times were you struck by the bolo, do you know?

A Two times.

Q And what happened to you after you were struck the second time?

A I slumped on the ground and fainted.

Q And when you recovered what did you see?

A When I regained consciousness I saw fifteen dead people around me.

Q And did you see any Japanese?

A No more.

Q What did you do then?

A I saw the flames consuming the house so I ran away.

Q I show you a picture marked for purposes of identification as Prosecution's Exhibit No. 19 and ask you whose picture it is.

A Mine.

Q And does this picture show the scars received by the bolos at barrio Hamog?

A Yes.

LIEUTENANT SHEPHERD: The prosecution offers into evidence Exhibit No. 19.

LIEUTENANT MC CULLOUGH: No objection.

COLONEL HAMBY: So ordered.

(Prosecution's Exhibit No. 19 was received in evidence.)

LIEUTENANT SHEPHERD: Would you arise and show your back to the Commission?

(Witness rises and exhibits back to Commission.)

LIEUTENANT SHEPHERD: Your witness.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q How many people were in this room above you?

A Sixty.

Q How many of those were killed?

A I do not know.

Q Do you know who killed them?

A I do not know.

Q Did you ever hear the name of Captain Watanabe?

A Yes.

Q Where did you hear it?

A From the cargador who went with the Japanese in the barrio.

Q Did he tell you that Captain Watanabe was in charge of that expedition?

A Yes.

Q Did he tell you that it was Captain Watanabe and not Colonel Watanabe who was in charge of that expedition?

A Colonel Watanabe.

A Are you positive now that you have heard the name of Captain Watanabe?

A Yes, Colonel Watanabe.

Q The question is, Are you sure that you have heard the name Captain Watanabe?

A Yes, I heard it was Colonel Watanabe.

LIEUTENANT MC CULLOUGH (To Interpreter): You tell the witness to answer the question I asked him. That is not the question.

(Interpreter Villaluz translated to the witness.)

A Colonel Watanabe.

Q That is not the question.

LIEUTENANT MC CULLOUGH (To Interpreter): He can answer it either yes or no, whether he heard of Captain Watanabe.

A No, I heard Colonel Watanabe.

LIEUTENANT MC CULLOUGH (To Interpreter): You tell him to answer the question either yes or no, whether he has heard of the name of Captain Watanabe; yes or no only.

A No.

Q Do you know the difference between "Captain" and the word "Colonel"?

A No.

LIEUTENANT MC CULLOUGH: That's all, sir. Thank you.

Just one further question.

BY LIEUTENANT MC CULLOUGH:

Q I ask you if at any time during the Japanese occupation you ever saw this Japanese officer standing beside me.

A No.

LIEUTENANT MC CULLOUGH: Let the record show that General Kono is the man I referred to.

COLONEL HAMBY: Any further questions by the prosecution?

LIEUTENANT SHEPHERD: Just one more question, sir.

BY LIEUTENANT SHEPHERD:

Q I hand you prosecution's Exhibit No. 6 and ask you if this is a picture of the Colonel Watanabe that you saw at barrio Hamog at the time you have mentioned.

A Yes.

LIEUTENANT SHEPHERD: Has the Commission any questions to ask the witness?

COLONEL CHASE: I have one. The prosecution, I think, failed to establish the date of these incidents.

BY LIEUTENANT SHEPHERD:

Q What was the approximate date that these incidents occurred? No, strike that.

What was the approximate date that this killing took place at barrio Hamog that you have mentioned?

A April 10.

Q What year?

A 1944.

COLONEL HAMBY: Any further questions?

(Witness excused.)

COLONEL HAMBY: The Commission will take a short recess.

(Short recess.)

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: Sir, may the record show that all members of the Commission are now present. May we acquaint Colonel Goff with our proceedings thus far in today's session.

COLONEL HAMBY: Proceed.

CAPTAIN YARD: Prosecution called as its first witness this morning Antonio Canag, whose testimony related to Specification 38. This witness testified in substance that he and members of his family were taken by the Japanese at their home in barrio Buenavista, Leon, Iloilo; that the Japanese who surrounded his home were six in number. The witness identified Colonel Watanabe as being one of those Japanese present; that approximately seven members of his family were killed by these Japanese.

Prosecution's next witness was Juan Cabalfin, whose testimony also related to Specification 38. He testified that in August of 1943 the Japanese captured his wife and two children at the barrio Buenavista, Leon; that he escaped,,observed them being killed. He identified Colonel Watanabe as being among the Japanese who took his wife and two children.

Prosecution's next witness was Felipe Tunay, whose testimony related to Specification No. 39. This witness testified in substance that in the month of April 1944 a Japanese force of approximately thirty men took him and a number of other civilians at the barrio Hamog, town of Leon, Iloilo; that he was taken along with the other civilians to the home of Julian Tubesa; that this Tubesa house consisted of two rooms, each room three arms' length

in size, according to the witness, and the rooms connected by a passageway with the doors open at either end; that there were about sixty persons taken to the one room; that he observed the first forty taken to the other room and there killed; that he was struck three times with a bolo and became unconscious; that when he regained consciousness he saw a number of bodies in the room. He identified, among the Japanese who were there, Colonel Watanabe. He said that when he regained consciousness the house was on fire.

Prosecution's next witness was Julian Tubesa, whose testimony also related to Specification No. 39 and who testified that a Japanese force of approximately thirty men took the approximately ninety civilians at the barrio Hamog, Leon, in April of 1944 -- I believe he said 10 April 1944 -- and were taken to his house, part of the group going upstairs, and that a group of men were downstairs; that he was among the group that was left downstairs; that he saw five of the men killed. He was the sixth victim. They attempted to behead him. When he regained consciousness he saw approximately fifteen bodies; that the house was burning, and he ran away. This witness identified Colonel Watanabe as being among those Japanese present. He testified that he saw a number of persons being taken upstairs in his house and heard these people cry not to kill them.

I might add that Felipe Tunay stated that the barrio lieutenant later told him that eighty-six persons were buried -- that's persons who were found in and around the Tubesa house.

On cross-examination of Julian Tubesa the question occurred as to whether or not the witness had seen or heard of

Captain Watanabe rather than Colonel Watanabe, the witness' testimony first indicating that he had heard of Captain Watanabe. On redirect examination he identified the photograph of Colonel Watanabe as being the picture of the man who was present at his house.

That in substance, sir, is the testimony that has transpired this morning. Do you have any additional questions you would like to ask?

COLONEL GOFF: No questions.

COLONEL HAMBY: Proceed.

CAPTAIN YARD: Prosecution calls as its next witness, Prudencio Ojas.

Captain Watanabe rather than Colonel Watanabe, the witness' testimony first indicating that he had heard of Captain Watanabe. On redirect examination he identified the photograph of Colonel Watanabe as being the picture of the man who was present at his house.

That in substance, sir, is the testimony that has transpired this morning. Do you have any additional questions you would like to ask?

COLONEL GOFF: No questions.

COLONEL HAMBY: Proceed.

CAPTAIN YARD: Prosecution calls as its next witness, Prudencio Ojas.

PRUDENCIO OJAS

a witness for the prosecution, was duly sworn and testified as follows through Interpreters Genoves and Villaluz:

LIEUTENANT SHEPHERD: If the Commission please, this witness' testimony relates still to Specification 39.

DIRECT EXAMINATION

BY LIEUTENANT SHEPHERD:

Q What is your name?

A Prudencio Ojas.

Q What is your age?

A 29.

Q Are you a Filipino?

A Yes.

Q Where do you live?

A Barrio Hanog, town of Leon.

Q Were you captured by the Japanese at barrio Hanog?

A Yes, sir.

Q What was the approximate date that this occurred?

A April 10, 1944.

Q What was the approximate size of the Japanese force that captured the civilians?

A Thirty Japanese.

Q What was done with the civilians after they were captured by the Japanese?

A When they took the civilians they gathered us in the middle of the barrio.

Q Were any of the people questioned by the Japanese?

A Yes, they questioned some.

Q Did you see this taking place yourself?

A Yes.

Q Would you tell the Commission how the Japanese questioned the people?

A I was sitting quite a distance from them so I was not able to hear the way they investigated.

Q Could you see what the Japanese were doing to the people?

A Yes, I saw.

Q What did the Japanese do to the people when they questioned them?

A The people were answering those questions and they were beaten.

Q How did they beat the people?

Butts 7 A They were struck by the backs of the rifles.

Q About what time of the day was it that the Japanese first captured the civilians at barrio Hanog?

A When they arrived at the barrio at about two o'clock in the morning.

Q The questioning lasted until about what time?

A Until six o'clock in the morning.

Q Do you know the names of any of the Japanese that were present?

A I know Watanabe.

Q How did you learn the name of Watanabe?

A Because when Colonel Watanabe ordered to catch chicken and pigs, I was told that it was Colonel Watanabe who ordered us.

Q Who told you that it was Colonel Watanabe?

A Some of the private soldiers.

Q Did he speak to you in Japanese?

A They were Japanese who knew to speak Visayan.

Q Did the Japanese try to kill you that day?

A Yes, they did, because I had even my scars.

Q Where were you when the Japanese tried to kill you?

A In my own house because I was cooking the food.

Q About what time of the day was it that the Japanese tried to kill you?

A More or less, according to my estimate, between four and five.

Q Is that in the morning or in the afternoon?

A In the afternoon.

Q What did the Japanese do between six o'clock in the morning and four o'clock in the afternoon?

A When they arrived two o'clock in the morning they gathered people and then brought them to the house at six o'clock.

Q What did they do between six o'clock in the morning and the time that they tried to kill you?

A They tried to catch chicken, pigs, and prepared three times of their meals that day.

Q Then the Japanese used you to catch chickens and pigs for them and cook for them, is that correct?

A Yes.

Q And you were cooking for them at your house when they tried to kill you, is that correct?

A That was after they have eaten three times and wanted to kill me.

Q How many Japanese tried to kill you?

A Two.

Q Did you know either of them?

A Of those who wanted to kill me I did not know any.

Q Were they in the same group of soldiers that you had been working for all day up to that time?

A Yes.

Q Did they say anything to you before they tried to kill you?

A They didn't say anything.

Q How did they try to kill you?

A While I was eating, two Japanese came up to the house. Then one of them hacked me at the back of my neck and then I fell to the floor. When I regained consciousness I tried to stand up and I was hit again on my chin. Then I keep still while I was laying flat, motionless on the floor. And then they watched me and struck me twice before they left.

Q I show you a picture which is marked for purposes of identification as Prosecution's Exhibit No. 20 and ask you whose picture it is.

A This is mine.

Q Is this a photograph of one of the scars left on your body by the bolos of the Japanese?

A This one (pointing to chin).

Q I hand you a photograph marked for purposes of identification as Prosecution's Exhibit No. 21 and ask you whose picture it is.

A This is also mine.

Q Does it show the scars on the back of your neck left by the bolo of the Japanese?

A Yes.

LIEUTENANT SHEPHERD: Prosecution offers into evidence pictures marked for purposes of identification as Prosecution's Exhibits No. 20 and 21.

LIEUTENANT MC CULLOUGH: No objection.

COLONEL HAMBY: They may be admitted.

(Prosecution's Exhibit Nos. 20 and 21 were received in evidence.)

Q Would you turn toward the Commission so they can see the scar?

(Witness does so.)

Q I hand you Prosecution's Exhibit No. 6 and ask you whose picture it is.

A Watanabe's picture.

Q And is this the man that was pointed out to you by the Japanese as ordering you to catch chickens and pigs?

A Yes, he was the one ordering us.

Q Are you sure this is the man?

A He is the man who ordered that.

LIEUTENANT SHEPHERD: Your witness.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Have you ever heard the name of Captain Watanabe?

A I did not hear.

Q Do you know the difference between a captain and a colonel?

A I do not know.

Q I ask you if at any time during the Japanese occupation you have ever seen this Japanese officer standing beside me.

A I did not see him.

LIEUTENANT MC CULLOUGH: Let the record show that the Japanese officer that I referred to was General Kono.

That's all.

COLONEL HAMBY: Questions by the Commission? There appear to be none. Witness excused.

(Witness excused.)

CAPTAIN YARD: Prosecution's next witness is Jose Montalban.

JOSE MONTALBAN

a witness for the prosecution, was duly sworn and testified as follows.

LIEUTENANT MURPHY: Sir, the testimony of this witness will apply to the alleged atrocities in Specification No. 40.

DIRECT EXAMINATION

BY LIEUTENANT MURPHY:

Q Please state your name.

A My name is Jose Montalban.

Q How old are you?

A I am thirty-one years old.

Q What is your nationality?

A Filipino.

Q And your present address?

A Maringyan, Iloilo.

Q Is that on Panay Island?

A Yes, sir.

Q What is your occupation?

A Before the time I arrived?

Q Well, at the present time.

A Well, a witness.

Q Prior to coming up here to be a witness, what did you do for a living?

A I was the municipal clerk of Maringyan.

Q During the Japanese occupation of Panay Island were you ever apprehended by members of the Imperial Japanese Army?

A Yes, sir.

Q About when did the Japanese apprehend you?

A That was about May 7, 1944.

Q Where were you apprehended?

A I was at my evacuation place.

Q And near what barrio was your evacuation place?

A Maringyan.

Q Who was caught with you?

A Civilians.

Q Would you estimate the number of Japanese soldiers in the group that caught you and the other civilians?

A In the whole group?

Q Yes.

A There were about fifty.

Q Fifteen?

A Fifty Japanese.

Q Fifty.

A More or less.

Q Will you explain in your own words what happened to you after you were apprehended by the Japanese.

A When they took me from my house, from my evacuation place, they tied me here at the back (demonstrating), and brought me to the hills. They brought me to the hills and we passed the Japanese -- the Japanese during that time were divided into two groups. We passed the first group and there I am seeing Makita in charge of the garrison at Maringyan bayoneting the women.

Q That was in the second group?

A Yes.

Q Go on, please.

A I stayed there for about -- when we passed the group where Makita was, I seen him bayoneting this woman. There were Japanese words which I heard and those two Japs who took me from my evacuation place took me there to another group where there is a Japanese interpreter.

Q Slow down. Now, what was that again?

A They led me to the first group where there was a Japanese interpreter who investigated me.

Q In regard to the killings which you have testified having taken place, how many persons were in the group being killed?

A Seven women.

Q Did you witness the death of these seven women?

A Well, I witnessed that they were dead because we were the ones who buried them.

Q No, but did you see them being killed?

A Yes, that is, I have seen them.

Q How many Japanese were taking an actual part in the killing of the seven women?

A Only Makita. And the others were guarding.

Q Could you give the names of those seven women, or part of them?

A Yes, sir.

Q Will you name them, please.

A Maria Siquibal, Eugenia de Noblezada.

Q How old was she?

A Who?

Q Eugenia.

A More or less, I could not determine, around 54, like that.

Q Any other victims?

A Ramona Sarrayno.

Q The age?

A Around 45 to 50.

Q Any others?

A Salvacion Noblezada.

Q Age?

A It's around 18, 19.

Q Did you notice any younger girls included in the group?

A Yes, sir.

Q Do you know the names?

A Venancia Sison.

Q How old was she?

A Five to six years.

Q I show you a photograph which has been admitted into evidence as Prosecution's Exhibit No. 13 and ask you if you can identify the person pictured thereon.

A This is Makita.

Q Is this Makita?

A That is Makita.

Q And that is the person whom you saw kill the seven women?

A Yes, sir.

Q How did you happen to know Makita?

A When Makita first arrived in the town of Miagao I don't know the date. He called for a meeting and, of course, the people being afraid because they said that they will not go inside of the town; the people in Miagao, they will be killed; so we went to the town, and he held a meeting, and the one that is presenting him, introducing him, said that he is Makita, the one in charge

in the garrison, in Miagao.

Q Was he an officer, do you know?

A Maybe, sir, because he has rectangle plate right at the middle (indicating right collar), with three stars in the middle.

Q But you don't know for sure whether he was an officer or not?

A Well, I know that he is in charge of the garrison.

Q Did these women, these seven women, appear to be armed?

A Armed?

Q Armed. Did they carry arms?

A No.

Q Following this where were you taken, that is, following the seeing of the killing of these people where were you taken?

A I was taken there to the other group.

Q Into the second group?

A Yes.

Q What happened to you while you were in that group?

A I was investigated by the Japanese interpreter; that was a Japanese, too.

Q What type of questions did they ask you?

A He asked me whether I was an army.

Q Whether you were a what?

A Whether I was an army -- an army man, and I answered him that I am not; but he will not believe me.

Q Do you know the man who was investigating you, the name of the man?

A I don't know him.

Q Continue.

A When he investigated me they questioned me about this Confesor, and I told him that before the Japanese landing he was in Iloilo.

Q Who was in Iloilo?

A Tomas Confesor. But when the Japanese landed he fled to the mountain, and I don't know which mountain did he hide. And when they was investigating me, some Japanese that were smoking placed the light of the cigarette here (indicating left arm), and he told me, he repeat his question, that whether I am an Army -- he said, "You are Army." "No, I am not," I told him, so one struck me here (indicating mouth).

Q What did he use to strike you with?

A It is a butt of gun.

Q Pardon?

A It is a gun, the butt of the gun.

Q The butt of the gun?

A The butt of the gun.

So this was -- so the tooth of mine was broken.

Q Your tooth was broken?

A Yes, one tooth was broken, and for a long time that he was questioning me about the army, I told him that I don't know where the army is because they were in the mountain. "If I tell you that they were in that portion and if we will go there and they are not there, you will kill me. So I prefer to tell the truth here and to be killed telling the truth, rather than to tell a lie." But he will not believe me. Someone kick me here at the back, and so after he could not get from me some questions, he uttered some Japanese words and tied me here, my back.

Q Now, just a moment. Were you knocked unconscious when you received the blow on the lip that knocked out your tooth?

A Here at the mouth (indicating). I was not unconscious at that time.

Q Then go on. You were tied up and then what happened?

A When he tied me at the back, he gives with the force of his knee and connects up a string.

Q Indicating the neck and arms.

A And when he tied me there he questioned me again -- whereabouts of the mayor of Miagao.-- and I told him that "The mayor, before your landing, was also in the town but when you landed he fled to the mountain and I don't know where that mountain is where he went." And so he told me that you are telling a lie. I answered that I am not telling a lie. Someone back-struck me here at the back. That was the time that I fell flat to the ground and I was unconscious.

Q Prior to being knocked unconscious, did you witness the death of any Filipino?

A Before I was unconscious and before I was investigated by the interpreter, I have seen that the Japs, besides the interpreter, was not the one -- some of the Japs killed Leonardo Noblezada.

Q What is the first name?

A Leonardo. L-e-o-n-a-r-d-o.

Q And the last name?

A Noblezada.

Q Did you at any time witness the death of Bernardo Noblezada?

A Yes, I witnessed the death of him.

Q When did you see Bernardo Noblezada killed?

A I have seen him; he was very near.

Q Pardon?

A I have seen him killed because he was very near, about three meters or so, the distance from me.

Q When was he killed?

A During that day, the morning.

Q During the time you were investigated, being investigated?

A Before I was investigated.

Q He was not in the group with the seven women?

A No.

Q And how was he killed?

A Well, he was stabbed here (indicating neck) by the bolo, civilian bolo, and then later he was bayoneted here at the back; that was the time he died.

Q In other words, they used a native bolo on him; the Japanese killed him with a native bolo?

A A civilian bolo, I meant to say, stabbed here (indicating neck), but he was not killed. So they bayoneted him here at the back and he was killed then.

Q How old was he?

A Around sixteen, more or less.

Q Was he armed at the time of his death?

A No.

Q Did you recognize the person who killed Bernardo Noblezada?

A No, sir.

Q Could you estimate approximately the number of Filipinos whom you saw tortured by the Japanese on that day, exclusive of those killed?

A The numbers who were caught?

Q Who were tortured.

A The whole numbers of the Filipino civilians that were caught during that time, there are forty.

Q About forty?

A Forty.

Q To go back to your story, they tied you up?

A Yes, sir.

Q Then what happened to you?

A When I was tied up here the Japanese told me that I was telling a lie, and I told him that I am not telling a lie, and so one Japanese hit me here at the back and I was unconscious during that time. I lay flat on the ground. When I lay flat on the ground, well, I don't know how long was that -- but I began to move, seemed to be recovering; someone placed a basket here at my neck and sat on the basket and when I began to move like this (jumping in squat position) I had to do like this, so of course, because it was very painful, I cannot avoid moving. When I move a little I will have to do like this again (jumping in squat position), so I just make myself pretending to be dead without any moving, and they left me. It was when the Japanese stood up and jumped on the basket like this (demonstrating), and I blacked out, and my nose, my mouth, and my ears were hurt. That was the time my health degraded.

Q After this incident what did the Japanese do to you?

A When I sat down, when I sat by the ground, one Jap gave the string, the end of the string and tied it to the tree. If I will stand I can rest, but they will not let me stand. They will make me sit down. If I will sit down like this

(squatting) this part of me, my buttocks, do not reach the ground. So it was very painful to me because the string is tied to the tree from my hands.

Q How long did they keep you in that position?

A Until morning.

Q And what happened in the morning?

A In the morning at around, maybe it was eleven to twelve o'clock on the second day, when morning arrived they untied me and around eleven to twelve o'clock the Japanese went out.

Q Were you released?

A We were only released when they went away.

Q How many were released with you, approximately?

A All of us.

Q About how many would that be?

A Well, around forty.

LIEUTENANT MURPHY: Will the record show that the witness indicated that he was kept in a squatting position all night and that his buttocks, what he referred to as "buttocks," was unable to touch the ground.

Q How do you know these people, eight or nine people, whom you have testified you had seen killed, how do you know that they were dead?

A Not nine, sir; not nine.

Q How many, then?

A There were seven women and one man only, eight in all.

Q I am still a little mixed up then as to that name you gave me before Bernardo Noblezada.

A Yes, he was --

Q What victim was that that you named before Bernardo Noblezada?

A The women, sir?

Q The victim, the name of the victim.

A Bernardo Noblezada.

Q Before that.

A I will name them.

Q Go ahead, name them, name the seven victims, the seven women.

A Maria Siquibal, Ramona Sarrayno, Eugenia de Noblezada, Lourdes Niepen, Salvacion Noblezada, Venancia Sison, and Praxedes Sison.

Q How do you know that they were killed, those seven women?

A I know that they were killed because we saw them after the Japs went away.

Q Did you bury Bernardo Noblezada?

A No.

Q Then who buried him?

A His father.

Q And Makita was the only member of the Japanese whom you recognized?

A Yes, sir.

Q Who appeared to be in charge of the group?

A Makita.

LIEUTENANT MURPHY: You may examine.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Will you describe again the insignia that you saw with three stars on it.

A It is a rectangle, red color with gold up the middle, with gold here, with three stars (indicating collar).

Q How many bars did it have under the stars?

A Well, I have seen that one only.

Q Just one?

A Yes.

Q You are sure it didn't have three?

A Three stars at the middle.

Q And also three bars?

A No.

Q How many bars did it have?

A One at the middle.

Q Were you a guerrilla?

A What was that?

Q I say, were you a guerrilla?

A No, sir.

Q Did you ever work with them?

A Guerrilla?

Q Yes.

A No.

Q Did you ever hear about them down there?

A I heard the guerrillas.

Q Do you know what army they were looking for that you referred to?

A (No response.)

Q You said the Japanese came up and asked you where the army was, is that right?

A Yes, sir.

Q What army were they asking about?

A About the army there in Panay.

Q You mean the guerrilla army?

A Yes, sir.

Q Was that the guerrilla army under Colonel Chavez?

A Well, I don't know about that.

Q Did you ever hear of Colonel Chavez?

A I heard his name but I don't know him.

Q Do you know whether or not Colonel Chavez' army was in that vicinity at that time?

A Repeat the question, sir.

Q Do you know whether or not Colonel Chavez' army or parts of his army were in that vicinity at that time?

A The army -- they were not there during that time.

Q Where were they?

A I don't know.

Q Did you see the six rifles and the ammunition that was captured by the Japanese there that day?

A Well, I don't know.

Q Did you ever see the rifles and ammunition that was taken away from the civilians that day that the killing took place?

A None.

Q Had there been any skirmishes between the Japanese and parts of the guerrilla forces down there at that time or about that time?

A No.

Q I ask you if you saw this Japanese officer standing beside me at any time.

A I have not seen him.

Q Have you ever seen him at any time during the Japanese occupation?

A (No response.)

Q Have you ever seen him any time during the Japanese occupation?

A I have not seen him. I am telling you that I don't even know him.

LIEUTENANT MC CULLOUGH: Let the record again show that General Kono is the man I referred to.

That's all the cross-examination.

CAPTAIN YARD: May we have the Commission's indulgence, sir, for a moment, sir.

(Conversation ensued between prosecution and defense counsel out of hearing of the court.)

LIEUTENANT MURPHY: Subject to any objection which the defense may have, I wish at this time to ask the Commission to take judicial notice of the insignia of rank worn by a sergeant major in the Imperial Japanese Army. It is a rectangular insignia with a red background through which runs a yellow bar, upon which is superimposed three silver stars. The rank of captain is a similar insignia except for the one yellow bar running through the middle. It has the one yellow bar running through the middle and yellow bars on the top and bottom running parallel to the middle stripe.

COLONEL HAMBY: Any objection by the defense?

LIEUTENANT MC CULLOUGH: No objection, sir.

COLONEL HAMBY: So ordered.

CAPTAIN YARD: Sir, with respect to this afternoon's session, we are expecting a witness in here by plane. If the Commission would reconvene again at 1330 instead of 1300, I believe that witness might be here and we would like to start this afternoon's session with that witness rather than putting him in some place in the middle. Therefore, we request

that we recess until 1330 hours.

COLONEL HAMBY: The Commission will recess until 1330.

(The Commission recessed at 1145 hours.)

AFTERNOON SESSION

The Commission convened, pursuant to recess, at 1330, 20 April 1946.

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: May the record show that all members of the Commission, accused together with his defense counsel and personal interpreter, and members of the prosecution are present.

Prosecution calls as its next witness Bernardita Naman.

BERNARDITA NAMAN

a witness for the prosecution, was duly sworn and testified as follows through Interpreters Genoves and Villaluz:

LIEUTENANT MURPHY: Sir, the testimony of this witness will be in regard to the alleged atrocities in Specification 41.

DIRECT EXAMINATION

BY LIEUTENANT MURPHY:

Q Will you please state your name.

A Bernardita Naman.

Q How old are you?

A Fifteen.

Q Are you a Filipino?

A Yes.

Q What is your present address, Bernardita?

A Miagao, Iloilo.

Q Is that on Panay Island?

A Yes.

Q Are you still in grade school?

A Yes.

Q During the Japanese occupation of Panay Island did Japanese soldiers ever come to your home?

A Yes, they went.

Q When did the Japanese soldiers come to your home?

A January 13, 1944.

Q Where did you live at that time?

A In the evacuation place.

Q And near what barrio was that?

A San Jose.

Q Was it during the day or during the evening that the Japanese came to your home?

A In the night.

Q At about what time would you say?

A Twelve o'clock.

Q How many Japanese were in the group that came to your home?

A Five Japanese went up the house.

Q What did the Japanese soldiers do?

A They searched every part of the house and when they arrived at the main hall they found a rifle.

Q How many rifles did the Japanese find in your home?

A Five.

Q Who owned these five rifles that the Japanese soldiers found in your home?

A They were the soldiers' rifles.

Q Did they belong to guerrillas?

A Yes.

Q Were the guerrillas sleeping in your home?that night?

A Yes.

Q How many guerrillas were there?

A One.

LIEUTENANT MURPHY (To Interpreter): Ask her that question again, please.

(The interpreter translated to the witness.)

A One.

Q Did you know the guerrilla's name?

A Yes.

Q What was his name?

A Mateo Lilo.

Q Didn't he have companions with him?

A No.

Q Where did he go when the Japanese came to your home?

A He went away.

Q Do you mean he ran away?

A Yes.

Q Where was he sleeping in your house that night?

A He just passed the night there.

Q Did he own the rifles?

A Yes.

Q Do you know the names of any of the five Japanese soldiers who came to your house that night?

A Yes.

Q What were their names?

A Itai and Makita.

Q I show you a photograph which has been admitted in evidence as Prosecution's Exhibit No. 13 and ask you if you know whose picture is on it.

A Makita.

Q Is that one of the five Japanese who came to your house that night.

A Yes.

Q I show you a photograph which has been admitted into evidence as Prosecution's Exhibit No. 14 and ask you if you can identify the person pictured thereon.

A Yes, Itai.

Q Was he one of the five soldiers who came to your house on that night?

A Yes.

Q How do you happen to know the names of these two soldiers?

A Because the people in the barrio said that no other Japanese who went there and killed people there but they were Itai and Makita.

LIEUTENANT MURPHY: Will the reporter read the last answer back, please.

(The last answer was read by the reporter.)

Q You recognized the two photographs that I have shown you as being the Makita and Itai who were present in your house that evening?

A Yes.

Q What did the soldiers do with the rifles after they had found them?

A He brought them down.

Q Brought them down there?

A Down the house.

Q Do you mean downstairs?

A Yes.

Q Did the five soldiers then return upstairs?

A Yes.

Q Did all five of them come back upstairs?

A Yes.

Q Did they question you and your family?

A Yes.

Q What questions did they ask you?

A When they found those five rifles they brought them near us and told us that we were keeping the army.

Q After the questioning what took place?

A Then they took hold of Dolores Nacisvalencia and killed her.

Q How many Japanese soldiers were present at this time?

A Five.

Q How old was Dolores?

A I do not know how old she was.

Q About how old was she?

A More or less twenty-three.

Q Was she related to you?

A Yes.

Q How was she related to you?

A She was my aunt.

Q In what way was she killed?

A Was hacked by the neck.

Q What kind of a weapon did the Japanese soldiers use to hack her.

A With a saber.

Q Did you recognize the soldier who killed her?

A Yes.

Q What was his name?

A Itai.

Q What happened after Dolores was killed?

A After that they killed also Candido Fortes, my grandfather.

Q How old would you say your grandfather was?

A About forty.

Q How was he killed?

A He was also hacked with a saber.

Q Did you recognize the Japanese who killed him?

A Yes.

Q Who was it?

A Itai.

Q Following the killing of your grandfather what happened?

A After my grandfather was killed he killed my grandmother, Pelagia Morales.

Q How old was your grandmother, Bernardita?

A Thirty-five.

Q How was she killed?

A Was backed also with a saber by the neck.

Q Did you recognize the Japanese soldier who killed her?

A Yes.

Q What was his name?

A Itai.

Q After the killing of these three relatives of yours what took place next.

A Then followed my mother and ourselves.

Q At this time, Bernardita, were all five Japanese present upstairs in your home?

A Yes, but two only did the killing.

Q What was your mother's name?

A Salvacion Fortes.

Q Was your father also killed?

A Yes.

Q What was his name?

A Daniel Naman.

Q Was a sister killed, one of your sisters killed?

A Yes.

Q How many sisters were killed?

A Two.

Q What were there names?

A Lourdes and Julia Naman.

Q Were any of your brothers killed?

A Yes.

Q What were there names?

A Nicolas Naman, Jose Naman.

Q How old was Julia, your sister?

A Two years.

Q How old was Jose, your brother?

A Four.

Q How old was Nicolas, your brother?

A Six.

Q How old was Lourdes, your sister?

A More or less thirteen.

Q Were there any other relatives of yours killed in the house?

A Yes.

Q What were their names?

A Silvestre Nacisvalencia.

Q What relation was he to you?

A Cousin of my grandmother.

Q Was there one other relative?

A Yes.

Q What was his name?

A Crescencio Nacisvalencia.

Q What relation was he to you?

A My uncle.

Q Bernardita, did you witness all of these killings which you have just mentioned?

A Yes.

Q Were they all killed by bayoneting and beheading?

A Yes.

Q And did Makita and Itai kill all the people whom you have named?

A Yes.

Q Were there any of the occupants of the home that night who survived?

A Yes.

Q What were their names?

A Teresita Naman.

Q Was she your sister?

A Yes.

Q About how old was she?

A She was eleven years.

Q Did someone else survive?

A Yes.

Q What was her name?

A Teresita Nacisvalencia.

Q And how old was she?

A Eight.

Q And was she your aunt?

A Yes.

Q In addition to these two whom you have just named, you yourself escaped with your life that night, is that not true?

A Yes.

Q Did one of the Japanese soldiers attack you, Bernardita?

A Yes.

Q What was his name?

A Itai.

Q Will you describe in your own words the attack that Itai made on you.

A He hacked my hand.

(Witness sobs.)

COLONEL HAMBY: The witness may be excused for a few minutes. The Commission will take a short recess.

(Short recess.)

COLONEL HAMBY: The Commission is now in session.

LIEUTENANT MURPHY (To reporter): Will you read the last question and answer back, please.

(The last question and answer were read by the reporter.)

A He hacked my hand and on my left hand also, and my head.

Q Did you also receive a wound on the back of your neck?

A Yes.

Q Did you also receive a wound on your left arm?

A Yes.

Q Between the elbow and wrist?

A Yes.

Q Did you also receive a bayonet wound near your left shoulder?

A Yes.

Q Did you also receive a bayonet wound on your right leg near your knee?

A Yes.

Q What kind of a weapon did Itai use in making this attack on you?

A With a saber.

Q I show you what has been marked for the purpose of identification as prosecution's Exhibit No. 22 and ask you if that is the photograph of yourself.

A Yes.

Q Is the wound in the palm of your left hand visible?

A Yes.

LIEUTENANT MURPHY: Subject to any objections which the defense may now offer, I offer into evidence this photograph marked Prosecution's Exhibit No. 22.

LIEUTENANT MC CULLOUGH: Sir, there is no objection.

COLONEL HAMBY: So ordered.

(Prosecution's Exhibit No. 22 was received in evidence.)

Q I show you what has been marked for the purpose of identification as prosecution's Exhibit No. 23 and ask you if that is a picture of yourself showing wounds received on your body.

A Yes.

LIEUTENANT MURPHY: Subject to any objections which the defense may have, I offer in evidence Prosecution's Exhibit No. 23.

LIEUTENANT MC CULLOUGH: Sir, there is no objection.

COLONEL HAMBY: So ordered.

(Prosecution's Exhibit No. 23 was received in evidence.)

Q Now, Bernardita, will you show the Commission the wounds you received on the back of your neck and on the top of your head.

(Witness rises and exhibits wounds to Commission.)

LIEUTENANT MURPHY: And also the wounds in the palm of your left hand.

I ask that the record show that there are two wounds on the back of the neck.

COLONEL HAMBY: So ordered.

Q You say that your sister escaped with you. Was she wounded, Bernardita?

A Yes.

Q How many wounds did she have on her body?

A Seven.

Q Was your aunt, your eight-year-old aunt, who also escaped, wounded?

A Yes.

Q How many wounds did she have?

A One.

Q Before escaping was your home set on fire?

A Yes.

Q Who set your house on fire?

A It was Itai.

Q How do you know that it was Itai?

A Because before this incident, when I went downtown to buy something in the market I saw Itai, and when that thing happened I saw Itai setting the house on fire.

Q In other words you saw Itai set the house on fire that night?

A Yes.

Q And were the bodies of your family still in the house when he set it on fire?

A Yes.

Q After escaping from the house where did yourself, your sister, and your aunt spend the night?

A We went away and hid ourselves under the tree.

Q Did your grandfather find you the next morning?

A Yes.

Q And was he another grandfather from the one that was killed in the house?

A That was another grandfather.

Q And what was his name?

A Antonio Naman.

Q Where did he live?

A In barrio San Jose.

Q When the attack was made on your life by Itai was your right hand completely severed?

A Yes.

LIEUTENANT MURPHY: I will reword that question.

Q When your grandfather arrived in the morning did he complete the amputation of your right hand?

A Yes, he did, because there was something still left, attached.

Q Bernardita, were any of the members of your family whom you have just named as having been killed by the Japanese, members of a guerrilla army?

A Yes.

Q Who was the guerrilla in your family?

A Mateo Lilo.

Q But he was not a victim. he was not killed that night, was he?

A No.

Q Were any of the people killed members of a guerrilla organization?

A Yes.

Q And of the people killed that night, who were members of the guerrillas?

A No, there was Mateo Lilo --

LIEUTENANT MURPHY: I will withdraw the question completely.

Q Bernardita, you have named twelve members of your family as having been killed by Makita and Itai.

A Yes.

Q Were any of those twelve persons guerrillas?

A None.

CROSS-EXAMINATION

BY LIEUTENANT McCULLOUGH:

Q Did all the killings that you were told about take place on the same day?

A Yes.

Q Will you tell me again who the five rifles belonged to that were found in the house?

A That belongs to Mateo Lilo.

Q Was he a relative of yours?

A Yes.

Q Do you know whether or not they found some ammunition at the same time they found the rifles?

A None.

Q Did you hear of any fighting or skirmishing taking place about a kilometer northeast of San Jose that night between the guerillas and the Japanese forces?

A None.

Q Do you happen to know how far the Barrio of San Jose is from Iloilo?

A I do not know.

Q How many Japanese were in this party that came to your house?

A Five.

Q Did you hear any shooting that night?

A None.

Q I ask you if you have ever seen the Japanese officer standing here at this table.

A No.

LIEUTENANT McCULLOUGH: Let the record show that the

man I referred to is General Kono.

That's all.

COLONEL HAMBY: Questions by the Commission?

EXAMINATION BY THE COMMISSION

BY COLONEL GOFF:

Q What relation is Mateo Lilo to you?

A He is my uncle, being the second cousin of my parents.

COLONEL HAMBY: If there are no further questions from the Commission, the witness will be excused.

(Witness excused)

CAPTAIN YARD: The prosecution's next witness is Remedios Necanaynay.

REMEDIOS NACANAYNAY

a witness for the prosecution, was duly sworn and testified as follows through interpreters Genoves and Villaluz:

LIEUTENANT MURPHY: The testimony of this witness will apply to the allegations in Specification 42.

DIRECT EXAMINATION

BY LIEUTENANT MURPHY:

Q Please state your name.

A Remedios Nacanaynay.

Q And your age?

A 15.

Q And your present address?

A Barrio Malagian.

Q And what town is that near?

A Near Miagao.

Q Is that on Panay Island?

A Yes.

Q Did you witness any atrocities committed by the Japanese soldiers?

A Yes.

Q When did you witness these atrocities?

A At Mat-y.

Q When did this take place?

A 11th of March.

Q In what year?

A 1944.

Q Will you tell in your own words what took place on the 11th of March, 1944?

A At Mat-y we were hiding in a hole, foxhole. At about

10:00 P.M. the Japanese discovered us.

Q Why were you hiding?

A We were afraid of the shooting.

Q Had you heard shooting that night?

A Yes.

Q And this foxhole that you speak of had been dug at a previous time for hiding purposes?

A Yes.

Q About how many people were in the foxhole on this night?

A More or less 20.

Q From what direction did the shots appear to come from?

A It appeared to come from Barrio Igtocong.

Q Go on with your story.

A We were ordered to come out from the hole and we were ordered to fall in line on the street, on the road.

Q Who ordered you to come out from the hole?

A The Japanese.

Q Then the Japanese found you with the 20 other people in the foxhole?

A Yes.

Q About how many Japanese found you?

A Two.

Q After you were told to get out of the foxhole and line up, did you see any other Japanese besides the two who found you?

A Yes.

Q About how many Japanese would you say were present around your group that evening?

A More or less 20.

Q By the way, about what time of the day was this that you were found?

A About 10:00 P.M.

Q Tell us in your own words what happened after the Japanese lined you up?

A Then they machine-gunned us.

Q Who machine-gunned you?

A I do not know.

Q Were you yourself struck with a bullet?

A Yes.

Q Where did the bullet strike you?

A On the upper right breast.

Q Did the bullet pierce your body?

A Yes.

Q I show you what has been marked for the purpose of identification as Prosecution's Exhibit No. 25, a photograph, and ask you if it is a picture of yourself.

A Yes.

Q Does the wound, the bullet wound below your right shoulder, show up in this photograph?

A Yes.

LIEUTENANT MURPHY: Subject to any objection which the defense may have, I offer into evidence Prosecution's Exhibit No. 25.

LIEUTENANT McCULLOUGH: No objections.

COLONEL HAMBY: It may be admitted.

(Prosecution's Exhibit No. 25 was received in evidence.)

Q I show you a photograph which has been marked for the purpose of identification as Prosecution's Exhibit No. 26,

and ask you if that is a pictu[illegible] of yourself.

A Yes.

Q Does that show the wound made in your body when the bullet left your body?

A Yes.

LIEUTENANT MURPHY: Subject to any objection [illegible] which the defense may have, I offer in evidence Prosecution's Exhibit No. 26, a photograph.

LIEUTENANT McCULLOUGH: Sir, there is no objection.

COLONEL HAMBY: Admitted.

(Prosecution's Exhibit No. 26 was received in evidence.)

Q At the time you were struck by the bullet what happened to you?

A I just fell to the ground.

Q What happened to the other 20 people who were lined up with you?

A Some were hit by the machine-gun bullets and some were stabbed.

Q Who stabbed them?

A Itai.

Q Could you see the Japanese who was doing the machine-gunning?

A Yes.

Q Did you know the Japanese soldier who was firing the machine-gun?

A No.

Q Out of the group of about 20 who were lined up, machine-gunned, bayoneted, approximately how many of them were killed?

A 15 were killed.

Q Did you see their bodies the following day?

A Yes.

Q Can you name a few of the victims?

A Yes.

Q Name them, please.

A Anastacio Nufable, Federico Nufable.

Q Were there any children included in the group?

A Yes.

Q Could you give the names of some of them?

A Romeo Noblezada.

Q How old was he?

A More or less 9 years old.

Q Was there a child there named Carlos?

A Yes.

Q What was his last name?

A Noblezada.

Q How old was he?

A 2 years.

Q Was there a child there named Anita?

A Yes.

Q What was her last name?

A Nufable.

Q How old was she?

A One year.

Q Did anyone survive the attack besides yourself?

A Yes.

Q Could you name any of those who survived?

A Dionisia Familiar and Salud Nuevaespana.

Q Was there a Mariano Nufable who survived?

A Yes.

Q You say some of these people were machine-gunned and others were bayoneted, and that you did not recognize the Japanese soldier who was handling the machine-gun. Did you recognize any of the Japanese soldiers who did the bayoneting?

A Yes.

Q What were their names?

A Itai.

Q How do you happen to know Itai's name?

A Before that incident, whenever I go to the town I used to see him guarding the Japanese garrison.

Q And you saw him present that night?

A Yes.

Q And you actually saw him killing some of these 15 victims?

A Yes.

Q I show you a photograph marked Prosecution's Exhibit No. 14, and ask you if you can identify the person pictured thereon.

A Itai.

Q That is the Itai you have been referring to?

A Yes.

Q Did you hear from others about another Japanese soldier who was present that night?

A Yes.

Q Did you see that soldier yourself?

A Yes.

Q Did you see him yourself?

A Yes.

Q What was his name?

A Makita.

Q I show you what has been marked as Prosecution's Exhibit 13, and ask you if you can identify the person pictured thereon.

A Makita.

Q Did you see him actually kill anyone that night?

A No.

Q Were any of the victims armed?

A None.

Q To your knowledge, were any of them guerillas?

A None.

LIEUTENANT MURPHY: You may ask.

CROSS-EXAMINATION

BY LIEUTENANT McCULLOUGH:

Q Did the killings that you testified about all take place on the same day?

A Yes.

Q What time of the day did it take place?

A About 10:00 in the evening.

Q How far were you from these killings?

A More or less two arms' length.

Q Were all of the people that you have testified about killed within two arms' length of you?

A Yes.

Q When did you first learn Itai's name?

A In December.

Q Of what year?

A 1944.

Q How did you learn it at that time?

A When I go to the town once in awhile, I saw him guarding the garrison.

Q What town are you referring to?

A Miagao.

Q Do you know about how long he was stationed there?

A Yes.

Q How long?

A More or less one year.

Q When did you first learn Makita's name?

A That December.

Q How did you learn it?

A There was a man who used to work at the garrison, and he was the one who told me that Makita was the Captain of the garrison.

Q When was that?

A About January.

Q Of what year?

A 1944.

Q When was the last time you saw Makita on Panay Island?

A September.

Q Of what year?

A 1945.

Q When was the last time you saw Itai on Panay Island?

A Together with Makita.

Q And what town were they in?

A At Miagao.

Q Did you hear of any skirmishes during March of 1944, between the guerillas and the Japanese near your barrio?

A None.

Q During the monthsof February and March did you hear of any fighting between guerillas and Japanese forces?

A None.

Q Did you hear about a bus being fired upon near your barrio in February or March of 1944?

A None.

Q Did you know about the guerillas'being stationed near that barrio in February or March of 1944?

A None.

Q How far is your barrio from San Joaquin?

A More or less 90 kilometers.

Q How far is your barrio from Guimbal?

A More or less 12 kilometers.

Q Did you hear of any fighting taking place at Guimbal during February and March of 1945 between the guerillas and the Japanese?

A None.

Q Do you know whether or not any members of your family

were members of the guerilla organization?

A None.

Q The last time that you saw Itai and Makita was in September of what year?

A 1945.

Q Where were they in September of 1945?

A In the garrison at Miagao.

Q Do you know when the Americans landed or came into that region around your barrio?

A No.

Q Do you happen to know when the Americans landed on Panay?

A I cannot remember.

Q I ask you if you have ever seen at any time during the Japanese occupation the Japanese officer standing here at this table.

A Never.

LIEUTENANT McCULLOUGH: Let the record show that the man I referred to is General Kono.

Sir, that is all the cross-examination.

LIEUTENANT MURPHY: I have one question, sir.

REDIRECT EXAMINATION

BY LIEUTENANT MURPHY:

Q Did you know Itai prior to the time that you saw him the night that the attack was made on your life?

A Yes.

LIEUTENANT MURPHY: That's all.

LIEUTENANT McCULLOUGH: That's all.

COLONEL HAMBY: Any questions by the Commission?

The witness is excused. . . .

(Witness excused)

The Commission will take a short recess.

(Short recess)

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: Prosecution calls as its next witness Adela Eslacin.

ADELA ESLACIN

a witness for the prosecution, was duly sworn and testified as follows through Interpreters Villaluz and Genoves:

LIEUTENANT MURPHY: This witness will testify as to the remainder of the atrocities specified in Specification No. 42.

DIRECT EXAMINATION

BY LIEUTENANT MURPHY:

Q Please state your name.

A Adela Eslacin.

Q And your age?

A Eighteen.

Q Your nationality?

A Filipino.

Q Where do you live, Adela?

A Miagao, Iloilo.

Q Is that on Panay Island?

A Yes.

Q Did you witness any atrocities committed by members of the Japanese Army?

A Yes.

Q On about what date?

A Eleventh, 1944, January.

LIEUTENANT MURPHY: There could be an error on the month there.

Q Where did this atrocity take place?

A At Mat-y.

Q Will you tell in your own words, Adela, what you saw take place.

A It was Friday evening that that incident happened, about 10:00 in the evening. We heard an explosion or shooting at Igtocong.

Q When you heard this shooting what did you do?

A Upon hearing the shooting we hid inside the hole.

Q What kind of hole did you hide in?

A Foxhole.

Q Was Miss Nacanaynay in the same foxhole with you?

A We were separated by a distance of about 10 meters.

Q Then didn't this incident take place on the 11th of March, 1944, rather than the 11th of January, 1944?

A January.

Q Approximately how many of you were hiding in the foxhole?

A More or less 20.

Q Did the Japanese soldiers find you and the other 20 people in the foxhole?

A Yes.

Q Prior to being found did you hear some machine-gun fire close by?

INTERPRETER VILLALUZ: (To reporter) Read that, please.

(The last question was read by the reporter.)

A Yes.

Q Was that machine-gun fire right close to you?

A Yes.

Q How many Japanese soldiers found you in the foxhole?

A Only 2 Japanese ordered us to come out from the foxhole.

Q Now, when you came out from the foxhole, what did the Japanese have you do?

A As we go out one after another from the foxhole, we were pushed roughly.

Q And after you got out of the foxhole did you see more than two Japanese soldiers around?

A Yes.

Q About how many Japanese soldiers were there altogether that you saw?

A More or less 20.

Q Did they line you 20 people up?

A Yes.

Q After you were lined up what happened?

A We were on line. We were asked to stand up. Every time one stands he is stabbed with bayonet.

Q Were any of the 20 people killed?

A Yes.

Q Approximately how many people were killed?

A More or less 16.

Q Can you name any of the victims?

A Yes.

Q Will you give their names and approximate ages?

A Maria Moyong, 50; Jose Romano, 55; Sinforosa Romano, 30.

(Witness sobs)

A (Continuing) Rosita Romano, 20.

Q Were there any children included in the 16 who were killed?

A Yes.

Q Could you name them?

A Aurelia Eslacin, 25 years.

Q Were there any babies included in the 16 victims?

A Yes.

Q Can you name them?

A Rodolfo Romano.

Q And how old was he?

A 2 years; Roberto Romano, 4 years.

Q Now, Adela, how were these 16 people killed?

A They were stabbed with bayonets.

Q Did you recognize any of the Japanese who actually took part in the killing?

A Yes.

Q What were their names?

A Itai.

Q Did you recognize anyone else?

A Yes.

Q Who else?

A Makita.

Q How did you know the names of these two Japanese soldiers?

A My companions told me they were Itai and Makita.

Q And did you later see Makita and Itai?

A Yes.

Q Where?

A At the garrison.

Q Where was the garrison located?

A At the town.

Q Did you, then, recognize them as part of the soldiers who took part in the killing of the 16 victims?

A No.

LIEUTENANT MURPHY: I will rephrase the question.

Q People in the barrio told you that Makita and Itai were among the soldiers, is that correct?

A Yes.

Q After that you saw both Makita and Itai at the garrison at Miagao?

A Yes.

Q Then did you know that they were two of the Japanese who were present on the night the 16 were killed?

A Yes.

Q I show you Prosecution's Exhibit No. 13, a photograph, and ask you if you can identify the person pictured thereon.

A Makita.

Q Was he present on the night the 16 people were killed?

A Yes.

Q I show you a photograph marked Prosecution's Exhibit No. 14, and ask you if you can identify the person pictured thereon.

A Itai.

Q And was he present the night the 16 people were killed?

A Yes.

Q Did they both take an active part in the killing?

A Yes.

Q Now, Adela, were you yourself personally injured that night?

A Yes.

Q Would you describe in your own words the attack on you?

A I was stabbed with the bayonet.

Q At the time you were stabbed with the bayonet, were you holding your baby in your arms?

A Yes.

Q How old was your baby at that time?

A 3 months.

Q What was his name?

A Rodolfo Romano.

Q And did the bayonet pass through the baby's body and into your own body?

A Yes.

Q Where did the bayonet pass through your baby's body?

A Near the nipples. It passed through the body to the back, by the right nipple.

Q At where did the bayonet that passed through the baby's body enter your body?

A Between the location of my two breasts.

Q After this attack on yourself and your baby what happened to you?

A He again bayoneted me on the portion of my body a little lower than my left breast, on the left side.

Q Was the baby still in your arms?

A Yes.

Q Did you receive any other bayonet wounds?

A No more except three; I have only three.

Q You have only mentioned two. Where was the third wound?

A The third was caused by only one bayoneting, only it passed through my body.

LIEUTENANT MURPHY: May the record show that

the witness pointed to a wound under her left armpit.

Q Is your baby Rodolfo, alive today?

A Yes.

Q Did you recognize the Japanese soldier who made this attack on yourself and upon your three-months-old baby?

A Yes.

Q Who was that?

A Itai and Makita.

Q Did they both attack you?

A Yes.

Q I now show you a photograph which has been admitted into evidence as Prosecution's Exhibit No. 25, and ask you to tell me whose picture it is.

A Remedios Nacanaynay.

Q Do you notice on the photograph a bullet wound below her right shoulder?

A Yes.

Q Did she receive that bullet wound on the same evening that you received the wounds on your body?

A Yes.

Q And she was in a group separate from your group?

A Yes.

Q When was your baby born?

A November.

Q And how old was the baby, Rodolfo, when the attack was made on your life?

A Three months.

Q Then it was in March and not January that the attack was made on your life?

A Yes.

Q I am going to ask you again the month that Rodolfo, your son, Rodolfo, was born.

A September.

Q I show you what has been marked for the purpose of identification as Prosecution's Exhibit No. 24 and ask you if it is the picture of yourself.

A Yes.

Q Does that show the wounds received on your body?
A Yes.
Q And the wound between your breasts is the wound that you received when you held your baby in your arms?

A Yes.

Q And the wound on your lower body and the wound on your left side were both caused by one thrust of the bayonet?

A Yes.

LIEUTENANT MURPHY: Subject to any objection which defense counsel may have, I offer into evidence the photograph marked Prosecution's Exhibit No. 24.

LIEUTENANT MC CULLOUGH: Sir, there is no objection.

COLONEL HAMBY: Admitted.

(Prosecution's Exhibit No. 24 was received in evidence.)

Q Were any of the sixteen victims armed at the time that they were killed?

A Yes.

Q What were they armed with?

A Rifles.

Q You are now referring to the Japanese soldiers?

A The Japanese.

Q Were any of the Filipinos who were killed armed?

A None.

LIEUTENANT MURPHY: You may ask.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q How far is the barrio of Mat-y from the barrio of Miagao?

A One kilometer.

Q How far is the barrio of Mat-y from the barrio of Igtocong?

A More or less one kilometer.

Q Had you heard firing all day long on January 11th, or the day when this killing took place?

A I only heard the shootings that whole evening.

Q How long did the shooting last?

A About one hour.

Q Do you know about when the explosion took place?

A About seven in the evening.

Q Do you know what caused the explosion?

A We don't know because when that explosion occurred we hid in the foxhole.

Q Do you know about the guerrillas coming down out of the mountains and making a raid on the barrio of Mat-y either that day or the day before?

A No.

Q Did you ever hear of the guerrillas coming down at that time and raiding houses in order to sieze clothing and provisions?

A No.

Q About the time of this killing did you hear about the guerrillas' coming down and torturing any of the civilians in your barrio or in the nearby barrios?

A None.

Q About the time of this killing did you hear of any skirmishes between the Japanese Army or that patrol and the forces of the guerrillas?

A No.

Q How far is the city or barrio of San Jose from the barrio that you live in?

A More or less ten kilometers.

Q How far were you from the place where the killing took place?

A Near the road.

Q How far, though, were you from the actual killing?

A We were only near.

Q Could you give me an approximate distance?

A We are near.

Q Were you fifty meters?

A No.

Q Were you closer than that or father than that?

A Very near.

Q Were you as near as I am to you now?

A We were adjacent.

Q You mean you were closer than I am to you, is that correct?

A The distance between you and me now is farther.

LIEUTENANT MC CULLOUGH: Let the record show that the witness is approximately fifteen feet from where I'm standing.

Q Do you know whether or not these Japanese soldiers found any rifles and ammunition in the houses of your barrios the night that this killing took place?

A No.

Q Did all of the killings take place within the barrio of Mat-y?

A Yes.

Q Let me ask you again: Were they all on the same day?

A One evening.

Q Are you sure that date was January 11, 1944?

A Yes.

Q How do you fix that date in your memory?

A How can one forget when one was bayoneted that evening!

Q I ask you if any time during the Japanese occupation you have ever seen this Japanese officer standing beside me.

A Never.

LIEUTENANT MC CULLOUGH: Let the record show I referred to General Kono. That's all the cross-examination.

COLONEL HAMBY: Questions by the prosecution?

CAPTAIN YARD: Nothing further, sir.

COLONEL HAMBY: Questions by the Commission? There appear to be none. The witness is excused.

(Witness excused.)

CAPTAIN YARD: The next witness is Engracia Maulit.

ENGRACIA MAULIT

a witness for the prosecution, was duly sworn and testified as follows, through Interpreters Genoves and Villaluz:

LIEUTENANT MURPHY: The testimony of this witness will apply to Specification No. 43.

DIRECT EXAMINATION

BY LIEUTENANT MURPHY:

Q Would you please state your name.

A Engracia Maulit.

Q What is your age?

A 35.

Q And your nationality?

A Filipino.

Q And your present address?

A Miagao, barrio of Paro-on.

Q Is that on Panay Island?

A Yes.

LIEUTENANT MURPHY: Exhibit No. 2 leaves out the hyphen between the two "o's" in that barrio.

Q Were you ever apprehended by the Japanese?

A Yes.

Q When did this take place?

A May 4, 1944.

Q Where were you apprehended?

A At the place below our barrio, at our evacuation place.

Q Who was with you at the time you were apprehended?

A Members of my family.

Q How many members were in the Japanese patrol that apprehended you?

A What I saw were twelve.

Q What did these Japanese do?

A We were asked to fall in line.

Q You and your family were asked to fall in line?

A Yes.

Q And then what happened?

A They took my father at the distance away from us where we could not hear what they were talking about. Apparently he was investigated.

Q Did you see them do anything to your father?

A He was killed after questioning.

Q What was your father's name?

A Silvestre Maulit.

Q How old was your father?

A 60 years old.

Q How did the Japanese soldiers kill your father?

A They bayoneted him and hacked his neck.

Q Then what happened?

A He was killed.

Q And after he was killed what did the Japanese soldiers do?

A After killing the members of my family they went back to the town.

Q That is not what I meant by my question. After you saw your father killed what did the Japanese soldiers next do?

A They next killed my sisters, Lucia Maulit, Martina Maulit.

Q What relationship was she?

A My sisters.

Q Did you see anyone else killed?

A Other than the members of my family I saw, besides, six other people killed.

Q But you have only named your father and two sisters. What other members of your family did you see killed?

A Monica Maulit, sister-in-law; Felicita Maulit, niece.

Q How old is Felicita?

A One-and-a-half years old.

Q Were they all killed by bayoneting and beheading?

A Yes.

Q How did it happen that you were not killed?

A Upon seeing that they were killing people I ran away and Ijumped into the brook wherein I hide.

Q From your hiding place did you see anyone killed?

A No more.

Q You spoke of seeing another group killed. Was this on the same day?

A Yes.

Q Where were these people killed?

A Also at the same place where my parents and members of my family were killed.

Q Were they all killed by the same group of Japanese?

A Yes.

Q Did you know any of the names of these victims?

A Yes.

Q What were they?

A There were four women: Fortunata Fortaleza, Magdalena Suavez, Petronila Suavez, Genoveva Suavez.

Q How old was Genovova?

A Two years old.

Q How were these last people killed?

A The same procedure as they did to the first.

Q Where did the Japanese find these other victims, outside of your family?

A The four women were caught by the Japanese in the hiding place in the barrio, while two other men were caught by the Japanese on the way.

Q In other words, when the Japanese soldiers found your family they had already captured the two men?

A They brought the two men already.

Q And the four women were caught in their hiding place near yourself and your family?

A Yes, we were in the same place.

Q Did you recognize any of the Japanese that took part in the killing of these victims?

A Itai.

Q Did you recognize Itai at that time?

A Yes.

Q Had you seen Itai before?

A Yes, I saw him at the market place in the town.

Q I show you a photograph marked Prosecution's Exhibit No. 14 and ask you whose picture it is.

A Itai, who killed members of my family.

Q Were any of the members of your family guerrillas?

A No.

Q Were any of them armed?

A My father had a bolo.

Q And that was the only weapon?

A Yes.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q How far is the barrio of Paro-on from the barrio of Miagao?

A About two-and-a-half kilometers

Q How far is the barrio of Miagao from Iloilo, if you know?

A Forty kilometers.

Q Have you ever heard of Mt. Diladila?

A No.

Q Have you ever heard of a mountain referred to as Diladila?

A Never.

Q Were these people that were killed both killed on the same day, that is, on the 4th of May, 1944?

A Yes.

Q Were they all killed inside the barrio of Paro-on?

A Not inside, no.

Q How far was it from the barrio?

A My estimate is less than ½ a kilometer.

Q Were they killed at night or in the daytime?

A In the morning.

Q About what time?

A About six o'clock in the morning.

Q Was it dark or light out at that time?

A It was quite clear already.

Q How far were you from where the killing took place?

A Not less than ten meters.

Q When was the first time you heard Itai's name?

A Before that incident I already heard of the name of Itai.

Q Were you able to recognize Itai by sight before that time and know him by name?

A I can recognize him even before the incident because when I go to the market one day I saw him and somebody referred to him as Itai.

Q When you refer to going to the market, do you mean the market in Miagao?

A Yes.

Q When was the first time you heard of Makita's name?

A I also heard Makita's name while I was at Miagao, but I don't know, I can't recognize his face.

Q When was the last time you saw Makita?

A I saw him here in Manila.

Q Did you see Makita any time after the killing on Panay Island?

A Yes.

Q Where did you see Makita last on Panay?

A In the town.

Q What town are you referring to?

A The own of Miagao.

Q Did you know of the month and year that you last saw him?

A I cannot remember.

Q I ask you if you have ever seen the Japanese officer standing here at the table beside me any time during the Japanese occupation.

A No.

LIEUTENANT MC CULLOUGH: Let the record show that I referred to General Kono. That's all.

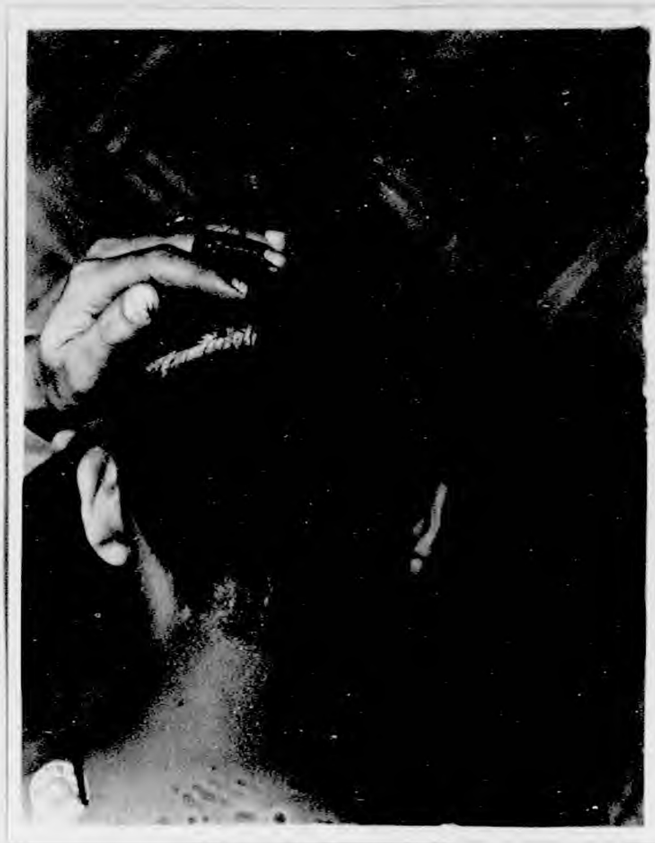
CAPTAIN YARD: We have no further questions, sir.

COLONEL HAMBY: Questions by the Commission? There appear to be none. Witness excused.

(Witness excused.)

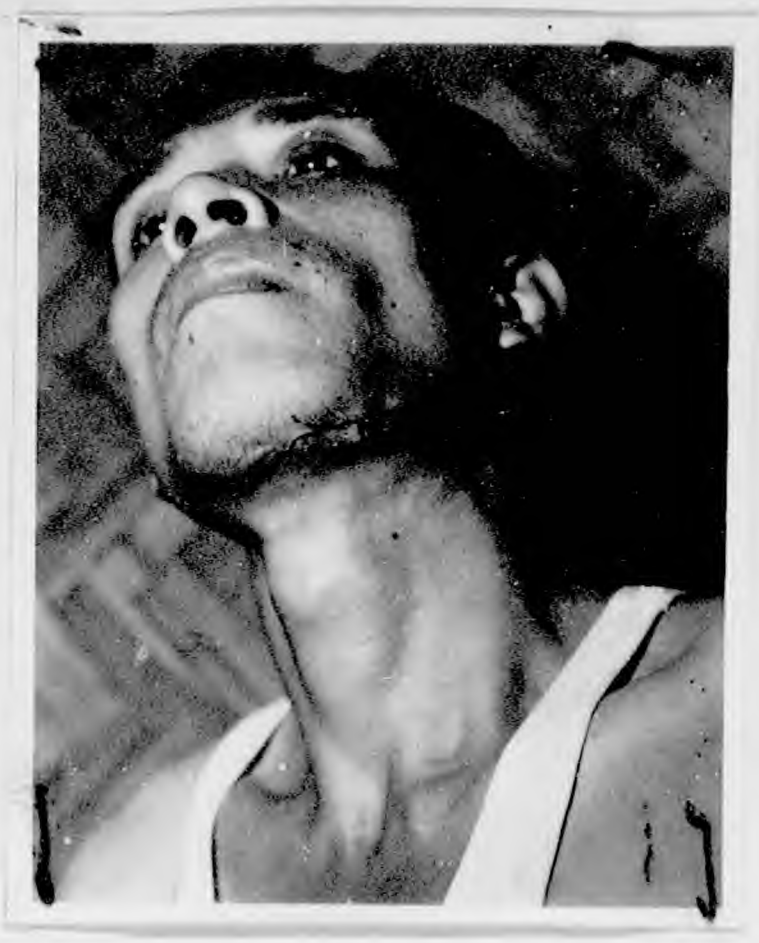
COLONEL HAMBY: The Commission will adjourn until Monday morning, 22 April 1946, at 8:30 A.M.

(The Commission adjourned at 1600 hours, 20 April 1946.)



Prosecution's Exhibit #18
U.S.A. vs Takeshi KONO
20 April 1946

Prosecution Exh. No. 19
USA vs. Takeshi Kono
20 April 1946



Prosecution's Exhibit #20
U.S.A. vs Takeshi KONO
20 April 1946

Prosecution Exh. No. 21
USA vs. Takeshi Kono
30 April 1946

Prosecution's Exhibit #22
U.S.A. vs Takeshi Wada
20 April 1946

Prosecution's Exhibit #23
U.S.A. vs Takeshi KONO
20 April 1946

Prosecution's Exhibit #24
U.S A. vs Takeshi KONO
20 April 1946

Prosecution Exh. No. 28
USA vs. Purnell Knox
20 April 1945

Prosecution's Exhibit #26
U.S.A. vs Takeshi KONO
20 April 1946

(2055)

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Armed Forces
Western Pacific

UNITED STATES OF AMERICA

vs

TAKESHI KONO

PUBLIC TRIAL

VOLUME VI

PAGES 548 TO 654

MANILA, P. I.

DATE: 22 April 1946

COPY NO.: 3

(2055)

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COPY NO.: 3

CERTIFICATION

This certifies that this volume is a part of the proceedings of the Military Commission appointed by Paragraph 21, Special Orders No. 85, Headquarters, United States Army Forces, Western Pacific, dated 12 April 1946, in the trial of the case of the United States of America v. Takeshi Kono.

Dated 7 May 1946

W. R. Hamby

WILLIAM R. HAMBY
Colonel, CAV
President of Commission

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

UNITED STATES OF AMERICA)
)
vs)
) PUBLIC TRIAL
TAKESHI KONO)
)
- - - - - - - - - - - - - - - -

Court No. 2-B
High Commissioner's Residence
Manila, P. I.
22 April 1946

Met, pursuant to adjournment, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL WILLIAM R. HAMBY, CAV, President and Law Member
COLONEL JOHN L. GOFF, CAC
COLONEL JOSEPH H. WARREN, INF
LIEUTENANT COLONEL JOHN A. CHASE, (CMP) FA
CAPTAIN JACK ELLINGSON, CMP

APPEARANCES:

FOR THE PROSECUTION:

(AS PREVIOUSLY NOTED.)

FOR THE DEFENSE:

(AS PREVIOUSLY NOTED.)

INTERPRETERS FOR THE COMMISSION:

(AS PREVIOUSLY NOTED.)

REPORTERS FOR THE COMMISSION:

ARNOLD COHEN
WILLIAM COHEN

Before the
MILITARY COMMISSION
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WILLIAM COHEN

I N D E X

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P R O C E E D I N G S

The Commission convened, pursuant to adjournment, at 0830 hours, 22 April 1946.

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: Sir, may the record show that all members of the Commission are present, the accused together with his defense counsel and personal interpreters, and members of the prosecution are present.

Prosecution calls as its first witness this morning Guillermo Fortugana.

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Prosecution calls as its first witness this morning Guillermo Fortugana.

GUILLERMO FORTUGANA

a witness for the prosecution, was duly sworn and testified as follows through Interpreters Villaluz and Genoves:

LIEUTENANT MURPHY: The testimony of this witness, sir, will apply to Specification 44.

CAPTAIN YARD (To interpreter): Tell the witness to speak loudly and clearly.

(Interpreter Villaluz translated to the witness.)

THE WITNESS: Sir, I cannot speak very loud because of my wounds suffered.

DIRECT EXAMINATION

BY LIEUTENANT MURPHY:

Q What is your name?

A Guillermo Fortugana.

Q How old are you, Mr. Fortugana?

A Forty.

Q Are you a Filipino?

A Filipino.

Q Where do you live, Mr. Fortugana?

A Miagao, Iloilo.

Q Is that on Panay Island?

A Yes.

Q What is your occupation?

A Farming.

Q Were you ever caught by the Japanese soldiers?

A Yes, only once.

Q About when was that?

A Tenth of April.

Q What year was that?

A 1944.

Q And where were you caught?

A Barrio Frantilla.

Q Is that near the barrio of Cagbang?

A A little farther away.

Q About how far?

A I cannot estimate the distance.

Q About how long would it take you to walk from Frantilla to Cagbang?

A My estimate is about half an hour.

Q About how many Japanese soldiers caught you?

A Only Itai.

Q How do you know that the soldier's name who caught you was Itai?

A I knew his name because I once worked in the garrison.

Q And where was that garrison?

A At Miagao.

Q Who else was caught with you?

A My wife and my children.

Q What was your wife's name?

A Valeriana Facto.

Q What were your children's names?

A Emilia Fortugana, Oscar.

Q How old was Oscar?

A Seven-and-one-half months.

Q How old was Emilia?

A Seven-and-one-half years.

Q Now, after you were caught did you see any other Japanese soldiers around the area?

A The other Japanese were quite some distance from where I stood.

Q About how many would you estimate were in that group of Japanese soldiers?

A More or less seventy in number.

Q Will you tell in your own words what happened when you and your family were caught by Itai.

A When Itai caught us he struck me with the butt of his gun on the face, then stabbed me on the neck.

LIEUTENANT MURPHY: Then, I believe the witness pointed to his back.

A (Continuing) I was hacked on the back with the saber. I was hacked with the saber twice on the back, once on the neck -- the first one I was struck with the butt of the rifle on the face.

Q Did you receive that hole which now appears on your left cheek from the butt stroke that Itai gave you?

A Yes.

Q I show you what has been marked for the purpose of identification as Prosecution's Exhibit No. 27 and ask you if you can identify whose picture that is.

A This is my picture.

Q And does this picture show the wounds that you received on your left cheek?

A Yes.

LIEUTENANT MURPHY: Subject to any objection from the defense counsel, I offer into evidence Prosecution's Exhibit No. 27.

LIEUTENANT MC CULLOUGH: There is no objection.

COLONEL HAMBY: Admitted.

(Prosecution's Exhibit No. 27 was received in evidence.)

Q Now, I show you a photograph which has been marked for the purpose of identification as Prosecution's Exhibit No. 28 and ask you if that is a picture of your back.

A Yes.

Q And does that represent the saber wounds that you received on your back which you were given when Itai attacked you?

A Yes.

LIEUTENANT MURPHY: Subject to any objection defense counsel may have, I offer in evidence Prosecution's Exhibit No. 28.

LIEUTENANT MC CULLOUGH: There is no objection.

COLONEL HAMBY: Admitted.

(Prosecution's Exhibit No. 28 was received in evidence.)

LIEUTENANT MURPHY: May the record show that the witness is exhibiting the wound on his cheek to the Commission.

Q I show you Prosecution's Exhibit No. 14 and ask you if you can identify the person who is pictured thereon.

A This is Itai.

Q Is that the Itai who made the attack on your life?

A Yes, he is the one.

Q Did you lose consciousness?

A Yes, I lost consciousness.

Q When you regained consciousness did you observe anything happening to your family?

A When I regained consciousness I saw Itai stabbing my wife.

Q How many times did Itai stab your wife?

A He stabbed her three times, one on the left chest near the armpit, the other one on the center of the chest, and the other one on the right side of the chest near the right armpit.

Q What weapon did he use?

A Bayonet.

Q Was your wife killed as a result of this attack?

A Yes.

Q Did you see anything happen to your daughter?

A My two other children were killed also by Itai.

Q Will you tell how they were killed.

A My other daughter was stabbed twice: first a little below the right nipples and the second stabbing was at the center of the stomach.

Q How was your seven-months-old son killed?

A He was thrown up in the air and when he fell on the ground he was hacked with sabers.

Q Did you bury members of your family who were killed?

(Witness weeps.)

A No, I did not because I was not able to resist.

Q What do you mean by "resist"?

A I cannot stand the pain in my back.

Q Who buried your family?

A My brother-in-law.

Q Now, Mr. Fortugana, after your family was killed did you witness the execution of any other Filipinos by Japanese soldiers?

A Yes.

Q How many other people did you see killed?

A More or less five.

Q Could you name any of those victims?

A I knew all of them.

Q All right. Give us their names, then, please.

A Purita -- I don't know the family name; a boy by the name of Aurelio.

Q What was his last name?

A Fortugana.

Q Was he related to you?

A My nephew.

Q How old was he?

A More or less seven years.

Q What were the names of the other victims?

A A boy by the name of Pedrito.

Q Is that a boy or a girl?

A Boy.

Q And was he related to you?

A He was the brother of Aurelio.

Q How old was he?

A More or less one-and-a-half years.

Q What were the names of the other two victims in this group of five?

A Juan.

Q How old was Juan?

A I don't know his family name.

More or less fifty.

Q There is one more. Do you remember her name?

A Simeona.

Q And about how old was she?

A More or less forty-five years.

Q Was she related to Juan?

A Simeona was the wife of Juan.

Q Now, Mr. Fortugana, were all of these victims, to your knowledge, unarmed?

A They were unarmed.

Q Did you yourself carry a weapon at the time you were caught?

A I never had.

Q Were you or any members of your family members of a guerrilla army?

A No.

LIEUTENANT MURPHY: You may ask.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Did all of the killings which you have described take place on the same day?

A Yes, on that day.

Q Was that April 10, 1944?

A Yes.

Q And did it all take place within the barrio of Frantilla?

A Yes.

Q I believe you said you were employed by the Japanese garrison at Miagao, is that correct?

A Yes.

Q What type of employment did you have?

A We were gathering stones to be used as covering to the door of the Municipality Building.

Q When did you first start working for the Japanese?

A I cannot remember the date and the year.

Q Do you recall how long you worked for them altogether?

A I only worked at the garrison one day.

Q Do you remember what year that was?

A I forgot the year.

A They were unarmed.

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A Yes, on that day.

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A Yes.

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A Yes.

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A We were gathering stones to be used as covering to the door of the Municipality Building.

Q When did you first start working for the Japanese?

A I cannot remember the date and the year.

Q Do you recall how long you worked for them altogether?

A I only worked at the garrison one day.

Q Do you remember what year that was?

A I forgot the year.

Q That one day that you worked at the garrison, is that the only time that you saw Itai?

A I also see him frequently whenever I go to town at the market place. That's where I recognized his face.

Q How did you learn his name?

A I knew his name because other people told me that his name was Itai.

Q How many persons were living in your barrio at the time this killing took place?

A I did not count the number of people in the barrio.

Q Do you know how far your barrio is from the barrio or City of Miagao?

A From Miagao to our barrio?

Q Yes, from Miagao to your barrio. How far is it in kilometers, if you know?

A Six kilometers.

Q Do you recall any raids carried out by the guerrillas in the district near your barrio at the time of these killings?

A No.

Q Do you know how far the City of Calinog is from your barrio?

A That is very far. I don't know that place.

Q Have you ever heard of the mountain of Diladila?

A No.

Q How many times altogether did you see Itai?

A Not less than ten times because I frequently go to the market place of Miagao while he was still there.

Q What was Itai doing in this market place at that time?

A During Saturdays they had meetings in the market place.

Q That one day that you worked at the garrison, is that the only time that you saw Itai?

A I also see him frequently whenever I go to town at the market place. That's where I recognized his face.

Q How did you learn his name?

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A No.

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A Not less than ten times because I frequently go to the market place of Miagao while he was still there.

Q What was Itai doing in this market place at that time?

A During Saturdays they had meetings in the market place.

Q Who had this meeting?

A Theirs, Itai's, and their companions.

Q What was the purpose of the meeting, if you know?

A I don't know the purpose. I cannot understand their language.

Q I ask you if you have ever seen any time during the Japanese occupation the Japanese officer standing beside me.

A I have never seen him.

LIEUTENANT MC CULLOUGH: Let the record show that I referred to General Kono.

CAPTAIN YARD: No redirect examination.

COLONEL HAMBY: Questions by the Commission? There appear to be none. Witness excused.

(Witness excused.)

CAPTAIN YARD: Prosecution's next witness is Teofilo Noble.

TEOFILO NOBLE

a witness for the prosecution, was duly sworn and testified as follows:

CAPTAIN YARD: This witness' testimony will relate to Specification No. 45.

DIRECT EXAMINATION

BY CAPTAIN YARD:

Q State your name.

A Teofilo Noble.

Q How old are you?

A Forty-six.

Q What is your nationality?

A Filipino.

Q Where do you live?

A Iloilo.

Q Prior to your coming up here where were you living?

A Tabloban.

Q Were you in the Civilian Detention Center at Tacloban?

A Yes.

Q And you are now being held in the stockade at the High Commissioner's Residence, is that correct?

A Yes.

Q Are you under charges of any kind?

A No.

Q In 1943 were you working for the Japanese at Iloilo?

A Yes.

Q Where were you working in Iloilo?

A At the Military Police.

Q What were your duties?

A Washing the plates.

Q Do you know where the garrison was at Iloilo?

A Yes.

Q Where was that?

A At the Iloilo High School.

Q Did you ever go over to the Iloilo School while the garrison was there?

A Sometimes I go there whenever they called for me.

Q I show you Prosecution's Exhibit 6 and ask you if you know whose picture that is.

A I don't know him.

Q Did you ever see this man at Iloilo High School garrison?

A Yes, sir.

Q But you don't know his name?

A No.

Q When did you first see the man whose picture I just showed you at the Iloilo High School garrison?

A About 1943, while he was riding on a horse.

Q What part of '43 was that, if you recall?

A In the middle, between 1943 and 1944.

Q You mean that you saw him at different times between the middle of 1943 and during 1944?

A I always saw him because usually he rides a horse when he takes a stroll.

Q Do you know what his duties were at the high school garrison?

A I do not know his work.

Q Did you ever know a Captain Watanabe?

A I know Captain Watanabe.

Q Is this Captain Watanabe (indicating picture)?

A I don't know if he is the one but I know Captain Watanabe.

Q Is this the man whom you know as Captain Watanabe, or is it someone else?

A He is also here.

CAPTAIN YARD: May the record show that the witness was shown Prosecution's Exhibit 6.

Q About how tall was Captain Watanabe?

A More or less my height. He was sturdy.

Q How tall are you?

A Five feet, five inches.

Q Did he have a moustache?

A No.

Q Did he wear glasses?

A No.

Q Was he bald-headed or did he have a head of hair?

A He was bald-headed.

Q About how old a man would you say he was?

A In my estimate, not less than thirty years.

Q Did you know General Takeshi Kono?

A No.

A I always saw him because usually he rides a horse when he takes a stroll.

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Q Did you know General Takeshi Kono?

A No.

Q Do you know this officer here (indicating)?

A I only heard his name but I don't know him.

CAPTAIN YARD: May the record show the Prosecutor pointed to the accused, Takeshi Kono.

Q I show you Prosecution's Exhibit 3 and ask you whose picture that is, if you know.

A No.

Q Ever see that man around the Iloilo High School garrison?

A I only heard his name, General Kono, but I don't know him.

Q You mean General Kono, or the man whose picture I showed you on Prosecution's Exhibit 3?

A I don't know all of them, both of them, but I only heard his name.

Q Whose name?

A General Kono's.

Q Did you ever hear of Colonel Tozuka?

A I also heard the name of Colonel Tozuka but I did not see him.

Q I show you Prosecution's Exhibit 11 and ask you whose picture that is.

A Kuwano.

Q Did you ever see that man around the Iloilo High School garrison?

A Yes.

Q Did you ever see anyone killed around the Iloilo High School garrison?

A Yes.

Q When was that?

A More or less by the middle of 1943 and 1944.

Q Do you remember what month in 1943?

A I cannot remember.

Q How many were killed?

A. Between six and seven.

Q Did you see them all killed at one time?

A The first time I saw, there were three.

Q When was that?

A I cannot remember the month, but it was between 1943 and 1944.

Q Was it in 1943?

A Yes, 1943.

Q Do you know who was killed?

A I don't know their names.

Q Who killed these people, if you know?

A Kuwano.

Q Is that the man whose picture I showed you a little while ago?

A Yes.

Q How did he kill them?

A They were hacked with saber.

Q Do you mean they were beheaded?

A Yes, they were beheaded.

Q Were their arms tied behind them?

A Yes.

Q Were they men or women?

A Most of them were men.

Q How many were men?

A More or less five men.

Q When was that?

A More or less by the middle of 1943 and 1944.

Q Do you remember what month in 1943?

A I cannot remember.

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A Most of them were men.

Q How many were men?

A More or less five men.

Q That is of the seven that you saw killed?

A Yes.

Q You saw three killed the first time, is that right?

A Yes.

Q Did anyone else assist Kuwano in killing these three?

A No.

Q What was done with the bodies of them after they were killed?

A They were first left; then later they called prisoners to bury them.

Q Did you see them bury the bodies?

A I saw the three buried, but the four they just left.

Q Now, when were these next four killed?

A It seems that it was a matter of coincidence when I happened to go there again. It happened after the lapse of about five or six days.

Q When was this, 1943 or 1944?

A 1943.

Q So that all seven persons were killed in 1943, is that right?

A Yes.

Q By whom were they killed?

A Kuwano.

Q Did you see them killed?

A Yes.

Q Did you see the other three killed?

A Yes.

Q How did Kuwano kill the four?

A The same procedure, beheading.

Q That is of the seven that you saw killed?

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Q Did you see them killed?

A Yes.

Q Did you see the other three killed?

A Yes.

Q How did Kuwano kill the four?

A The same procedure, beheading.

Q Did you know any of these four?

A No.

Q Were there women in the four?

A All of them were men.

Q What was done with the bodies?

A At first they just left the bodies but when there are prisoners they call for the prisoners to bury the bodies.

Q At the time you saw Kuwano kill these people did you know that he was Kuwano?

A Yes, I already knew him.

Q Did you ever see anyone else killed around the Iloilo High School Garrison?

A No more.

Q Were these Filipinos that you saw killed?

A All of them were Filipinos.

Q Did they all have their hands tied behind them at the time they were killed?

A Yes.

Q Did you see these people when they were brought into the garrison?

A No.

CAPTAIN YARD: You may examine.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Are you describing the death of seven people altogether; is that correct?

A Yes.

Q Three were killed at one time and about four people were killed some six or seven days later, is that correct?

A Yes.

Q Were they all killed by Kuwano?

A Yes.

Q Will you tell where this killing took place in relation to the high school at Iloilo?

A Behind the Iloilo High School building where it was an open field where no passers-by passed by.

Q How many meters from the high school was it?

A The distance was about from the place where I am sitting now to the next wall, the last wall of this next building.

LIEUTENANT MC CULLOUGH: I believe that is approximately 75 feet, is that correct?

CAPTAIN YARD: Yes.

COLONEL HAMBY: Accepted.

Q Did all these killings take place in the daytime or at night?

A Afternoon.

Q How far were you from where the killings took place?

A Near, because the people could be seen clearly.

Q Will you estimate how many kilometers you were from the first killing.

A It cannot reach one kilometer because I was only standing near.

Q Now, you are right next to them, is that correct?

A Not very, very near, but I can still recognize the place of the people.

Q Were you closer than I am to you now?

A The place where I stood was about from where I am sitting now to that wall, next wall, first wall.

LIEUTENANT MC CULLOUGH: Is it agreeable to let the record show that that is approximately sixty feet?

COLONEL HAMBY: Accepted.

Q Now, how far were you from the scene when the second killing took place?

A I was at the same place.

Q Were you in the high-school building?

A I was there.

Q Can you be a little more specific as to when this killing or these killings took place as to time?

A I cannot tell you definitely the exact date because usually things like that, I do not remember dates.

Q When did you start working for the Japanese?

A 27th of August, 1942. I was imprisoned by them three days.

Q Then were you turned loose to work for the Japanese?

A Yes.

Q How long had you been working for the Japanese when this killing took place?

A I was working with the Japanese more or less between five and six months already.

Q Then would you say the killing took place in March or April of 1943?

A I cannot tell you that those dates you mentioned were the ones because I cannot remember the dates; it was in that year.

Q Was it in the first half of the year or in the last half of the year?

A More or less in the middle part.

Q Would you say, then, it may have been in June or July?

A I cannot say that because I cannot remember.

Q What were your duties after you were employed by the Japanese?

A It was washing dishes after their meals.

Q How long did you work as a dishwasher?

A More or less six months because sometimes they used to take me to drive their car to the hospital.

Q When did you quit working for the Japanese?

A I only stopped working with the Japanese when the Americans landed last March 1945.

Q How long did you work as an investigator for the Kempei Tai?

A More or less one year.

Q What were your duties in the Kempei Tai?

A My work consisted of washing dishes, because the remnants of the food are used to put inside the can and bring home to my family.

Q Did you also work as an investigator for the Military Police or Kempei Tai?

A No.

Q Do you know where the Kempei Tai headquarters were in relation to the garrison headquarters?

A The Kempei office was in front of the Bilibid Prison of Iloilo.

Q How far was that from the high school?

A More or less one kilometer.

Q Did you work at Bilibid Prison at any time for the Japanese?

A No.

Q Did you ever work under the Military Police of the Japanese while you were employed?

A Yes, my work consisted always of washing dishes.

Q Did you ever carry a weapon of any kind in your work?

A Sometimes they also gave me, but in the afternoon I always returned it back to them.

Q What kind of a weapon did you carry?

A A .32 caliber revolver of the police.

Q Did you ever fire that weapon at any Filipinos while you were employed by the Japanese?

A Never.

Q Are you being held as a collaborator at the present time?

A I am a detainee, a collaborator.

Q Are you being detained as a collaborator for washing dishes?

A Because in our place anybody who works under the Japanese is considered a spy of the Japanese.

Q How frequently did you see the Captain Watanabe that you have referred to?

A I only saw Captain Watanabe when they brought me to the mountain.

Q During all of the time, then, that you worked in Iloilo you only saw Captain Watanabe once, is that right?

A I only saw him once in the mountain.

Q What were you doing in the mountains at the time you saw him?

A I was carrying rice and water for the Japanese in that expedition. We were about 150 Filipinos.

Q How far were you from Iloilo at that time?

A More or less fifty-five kilometers.

Q What barrio was that near?

A At the crossing of Calinog on the road toward Duenas.

Q Do you know where Mount Diladila is?

A No.

Q Do you believe that you could recognize Captain Watanabe if you saw him again?

A If he were alive I could recognize him.

Q Do you know whether or not he is alive?

A While I was at Iloilo I received the news that he died at Negros.

Q Do you know where Mount Diladila is?

A No.

Q Do you believe that you could recognize Captain Watanabe if you saw him again?

A If he were alive I could recognize him.

Q Do you know whether or not he is alive?

A While I was at Iloilo I received the news that he died at Negros.

Q Now, I show you Prosecution's Exhibit No. 6 and ask you to state whether or not that is the Captain Watanabe that you referred to. Take a good look at it.

A This is not Captain Watanabe because Captain Watanabe did not have a mustache.

Q Do you know about Captain Watanabe's reputation in Iloilo during the time you were working for the Japanese?

A I knew his reputation because he is known to be the one giving orders to kill prisoners whon they are caught.

Q Do you know whether or not he gave the order to kill these seven people that you have described?

A I do not know who gave the order. Only what I saw Kuwano was the one who killed.

Q Now, you say you know what Captain Watanabe's reputation was. Will you tell the Commission what that was.

A He was known as Captain Watanabe and he leads the expedition to the mountains.

Q Do you remember Kuwano leaving Iloilo in 1943 to go on an expedition?

A What I only remember was the time when I was with him when we went to Calinog.

Q Do you know whether or not you left Iloilo to go to Calinog about July of 1943 and did not return until December of 1943?

A I cannot remember those dates. What I only remember was that time in September when we went to Calinog.

Q Did you go clear into Calinog with the expedition?

A Yes, to Calinog until we reached Ajuy.

Q All right. Now, on this expedition did you leave Iloilo by water and land near New Washington and the north coast of Panay?

A When we started from Iloilo we took a truck to Calinog. When we reached Calinog we rested and took our meals.

Q How far is Calinog from Iloilo, approximately?

A Around sixty-five kilometers.

Q Was Kuwano still with you when you arrived at Calinog?

A We were together until we reached the Town of Passi.

Q Then where did he go?

A We stayed at Passi, slept there that evening.

Q Did he then return back to Iloilo, if you know?

A No, we continued our way until we reached Ajuy.

Q Was Kuwano with you when the expedition returned to Iloilo?

A No more. I was the only one who returned back with the other Japanese soldiers.

Q I don't believe you understood my last question. Will you tell me if Kuwano returned to Iloilo with the expedition?

A No, because they proceeded with other Japanese to Sara and Tapaz.

Q Now, do you know when you returned to Iloilo?

A I returned back to Iloilo September 10, 1943.

Q How long did the expedition last altogether, that you were on?

A Myself, with that expedition, I stayed with them more or less nine days, while the rest stayed with the expedition for about a month's time.

Q Did the killing that you have described take place before the expedition or afterwards?

A After the expedition, when they already returned.

Q How long afterwards?

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A Myself, with that expedition, I stayed with them more or less nine days, while the rest stayed with the expedition for about a month's time.

Q Did the killing that you have described take place before the expedition or afterwards?

A After the expedition, when they already returned.

Q How long afterwards?

A More or less about two or four months.

Q Then would you say that the killing took place either in December of '43 or January of 1944?

A More or less in that year, but the month and the date and the day I cannot remember.

Q Now, you say that year. Do you mean 1943 or 1944?

A Between 1943 and 1944.

Q Was it in the latter part of 1943 and the first part of 1944?

A In the latter part of the year 1943.

Q Then, to the best of your recollection, would you say that it was approximately in December of 1943?

A That is the thing I cannot say definitely, because I cannot remember those days. But I am sure it is the year 194[illegible]

LIEUTENANT MC CULLOUGH: I would like to have the Commission's indulgence on this. The only thing I am attempting to do here is to establish within reasonable time when the incident took place. If I could even tie it down as to months I'll be satisfied, but it will be impossible for us to prepare a defense or anything even in mitigation to this case, either to the General or to Kuwano, when his case comes up, if we don't have the approximate time of the killing. I believe that that is a fair question.

COLONEL HAMBY: Does the prosecution have any other witnesses on this specification?

CAPTAIN YARD: No, sir. We have never been able to get any further than defense counsel has here except that it was the latter part of '43 and that was the reason we specified this case the way we did: '43 and '44. It was the best we could get from this witness.

COLONEL HAMBY: Well, at this time the Commission will take a short recess and the defense will proceed after the recess.

(Short recess.)

COLONEL HAMBY: The Commission is now in session.

LIEUTENANT MC CULLOUGH: If the Commission please, I would merely like to make this observation at this time: that there is a lot of conflicting evidence in both direct and cross-examination as to the time when this event took place, the killing of these seven people; that he testified at one time that he started to work on the 27th of August 1942 and was held prisoner for approximately three days and then some five months after --

CAPTAIN YARD: Excuse me. Five to six months.

LIEUTENANT MC CULLOUGH: -- five to six months after he was employed, that the killing might have taken place.

Now, assume that he is correct in that answer. That would put the killing as having taken place in January or February 1943. If he is correct in that answer, I merely want to call the Commission's attention to the fact that General Kono did not assume command over Panay Island until 7 May 1943, therefore could not be charged with any implication in regard to having command responsibility over that incident.

We feel that unless that killing can be established subsequent to May 7, 1943, it should be stricken from the specification.

CAPTAIN YARD: By the same token, sir, on cross-examination, further this witness stated that after September 10, 1943, the date which he returned from the expedition where he had gone for some nine days, these executions took place.

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CAPTAIN YARD: By the same token, sir, on cross-examination, further this witness stated that after September 10, 1943, the date which he returned from the expedition where he had gone for some nine days, these executions took place.

I say that the evidence has probative value and it is a question for the Commission to determine from the evidence that has been given in here whether or not it was in the latter part of 1943, as the witness has testified, or in the first part of 1943.

The witness has said, "I can't remember the dates." I believe that through the cross-examination of Lieutenant McCullough he has finally found something to which he can tie these executions in, and that is the expedition in September of 1943 wherein he went up around Passi.

Therefore, we believe that it should not be stricken.

COLONEL HAMBY: The Commission will take cognizance of the statements of the defense and the prosecution, and also cognizance of the testimony of the witness. Proceed.

LIEUTENANT MC CULLOUGH: Sir, that is all the cross-examination.

CAPTAIN YARD: I have one other question, sir.

REDIRECT EXAMINATION

BY CAPTAIN YARD:

Q Do you know the reputation of Kuwano around Iloilo?

A He was notorious for killing actually, with his own hands, people who were supposed to be killed.

Q Would you say, then, his reputation was that of a killer?

A Yes, he is the executioner.

Q As compared with other Japanese that you knew around Iloilo, what was his reputation?

A His reputation, he is the executioner every time where there needs to be a killing.

CAPTAIN YARD: That's all.

RECROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q How many of these expeditions did you go on with the Japanese army?

A Only one. That was the month of September.

Q Did you ever see the Japanese officer standing beside me at this table before?

A No, never seen him.

LIEUTENANT MC CULLOUGH: Let the record show I am referring to General Kono.

That's all, sir.

COLONEL HAMBY: Questions by the Commission? There appear to be none. Witness excused.

(Witness excused.)

GUILLERMO SAN AGUSTIN

a witness for the prosecution, was duly sworn and testified as follows:

LIEUTENANT SHEPHERD: If the Commission please, this witness will testify in regards to Specification 46.

DIRECT EXAMINATION

BY LIEUTENANT SHEPHERD:

Q What is your name?

LIEUTENANT SHEPHERD: This witness speaks English.

A Guillermo San Agustin.

Q What is your age?

A Twenty-nine years old.

Q Will you speak up a little more loudly and speak toward the Commission and the defense counsel so that they may hear you easily.

What is your nationality?

A Filipino.

Q Where do you live?

A I live in Guimaras Island, barrio Buenavista.

Q During the Japanese occupation of Guimaras Island did you have occasion to witness the questioning of a Filipino named Edison Garganera?

A Yes, sir.

Q Would you tell the Commission in your own works just what you observed and the approximate date that this did occur.

A It was in the month of May when I happened to be caught by the Japanese forces in that barrio in Guimaras Island. It was about twelve o'clock in the evening when they took us inside the garrison and tied us up. While we were there

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A It was in the month of May when I happened to be caught by the Japanese forces in that barrio in Guimaras Island. It was about twelve o'clock in the evening when they took us inside the garrison and tied us up. While we were there

we were questioned. After an hour another group of Japanese soldiers came in and they were taking with them a young boy by the name of Edison Garganera. And then he was tied in a room about two meters from where they were conducting the investigation. Well, when they began investigating Edison, during the course of the investigation they were also beating him with a big stick, and after an hour of beating they began giving him -- they began putting water inside his mouth, and filled his stomach with water. But still they insist in questioning the said boy. After the water cure that they have given him, they took another big bunch of paper and they took off his clothes of the small boy. They made him stand -- shall I? (Demonstrating.) They made him stand like this without any clothes. Then they burned the paper and put it right here, burning his organ.

LIEUTENANT SHEPHERD: Would you have the record show that the witness pointed to his own organ between his legs.

A (Continuing) Then they began boating him again until he was unconscious. After that they tied him to a post not far from the investigating table and in the next morning I saw the boy taken out by the Japanese soldiers and they covered him with a raincoat. But the appearance of the boy -- he could not be identified now. His face was swollen and his body was all burned. And so they took him out and brought him to the end of the wharf, which was around 150 meters from the place, from the garrison house. Well, after that I heard -- that he could be seen but very far off. The soldiers came back, and somebody told me that they had disposed, or

they have killed, the boy and thrown him in the water.

Q When you were arrested by the Japanese yourself did you know the names of any of the Japanese soldiers that molested you?

A Yes.

Q Would you tell the Commission the names of any that you remember?

A The commander of the garrison was Hamamoto, and his assistant was a Japanese by the name of Shinmio.

Q Were either of these two Japanese among the group that arrested you?

A One only.

Q Which one was that?

A Shinmio was in the group.

Q After you were taken to the garrison and questioned yourself, was Hamamoto present?

A Yes, he was the one conducting the investigation.

Q He investigated you, is that correct?

A Yes.

Q Did you also see that he was present and conducting the investigation of Edison Garganera?

A Yes.

Q Did he use an interpreter to question?

A They had one.

Q So were you able to understand the questions that Hamamoto asked?

A Yes.

Q What was the nature of the questions directed to Edison Garganera?

A They want to know whether this boy, through the report of somebody, was really a spy of the guerrillas outside, but the boy denied everything and they insisted until he had to submit, because of the heavy beating that he received from the soldiers.

Q Was Edison Garganera, to the best of your knowledge, actually aiding the guerrillas?

A Well, he was too young for that thing, and I don't know whether he was really helping or he was just going around.

Q What was Edison Garganera's age approximately?

A He was around 18 or 19.

Q Just what date was it that this occurred, the approximate date?

A It was around the month of May, but I didn't remember the date.

Q Do you remember the year?

A 1944.

Q And you were approximately how many meters from the place where Garganera was tortured by the Japanese?

A I was around three meters.

Q And you could see all that went on, is that correct?

A Yes.

Q Were you able to see the form of Garganera from the time he was brought into the garrison until he was led out by the Japanese soldiers?

A Yes.

Q During that time did you ever see any semblance of an actual trial given to Garganera?

A I could see it from the outside.

Q Did you actually see a trial given to Garganera?

A No, that was the way they tried any Filipino that they catch. They tried them by questioning and then by bayoneting, torturing them.

Q But that is the only trial that you saw Garganera receive?

A Yes.

Q How long from the time Garganera was brought into the garrison and you first saw him did the torture of Garganera last?

Q What was Edison Garganera's age approximately?

A He was around 18 or 19.

Q Just what date was it that this occurred, the approximate date?

A It was around the month of May, but I didn't remember the date.

Q Do you remember the year?

A 1944.

Q And you were approximately how many meters from the place where Garganera was tortured by the Japanese?

A I was around three meters.

Q And you could see all that went on, is that correct?

A Yes.

Q Were you able to see the form of Garganera from the time he was brought into the garrison until he was led out by the Japanese soldiers?

A Yes.

Q During that time did you ever see any semblance of an actual trial given to Garganera?

A I could see it from the outside.

Q Did you actually see a trial given to Garganera?

A No, that was the way they tried any Filipino that they catch. They tried them by questioning and then by bayoneting, torturing them.

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A No, that was the way they tried any Filipino that they catch. They tried them by questioning and then by bayoneting, torturing them.

Q But that is the only trial that you saw Garganera receive?

A Yes.

Q How long from the time Garganera was brought into the garrison and you first saw him did the torture of Garganera last?

A It was about two hours. He came in around one o'clock until three o'clock in the morning.

Q Did you see Hamamoto actually do any of the torturing of Garganera?

A No.

Q Did you see Shinmio actually do any of the torturing?

A Yes.

Q To the best of your recollection was Hamamoto present during the time the torturing was done to Garganera?

A He was present.

Q And to the best of your knowledge he was in charge of the Japanese garrison at Buenavista, is that correct?

A Yes.

Q You did not see Garganera killed?

A No.

Q You just heard about it. But you did see him led out of the garrison clad only in a raincoat early in the morning by a squad of Japanese soldiers, is that correct?

A Yes.

Q And you have never seen him since?

A No, sir.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q On what date did this happen?

A I cannot really tell the date because that was during the month of May.

Q Of what year?

A 1944.

LIEUTENANT MC CULLOUGH: I wonder if the witness may be excused for a short period while I make a statement to the Commission.

COLONEL HAMBY: The witness is excused for a short period.

(Witness excused.)

LIEUTENANT MC CULLOUGH: I would like to ask the Commission's indulgence, sir, in order to conduct an experiment as to identification by having four or five prisoners brought out from the stockade, including Hamamoto, to determine whether or not this witness can identify him.

COLONEL HAMBY: Agreed.

CAPTAIN YARD: We have not had a photograph made of this man. We had one taken but have not received it. I have never seen the man and I don't think any of the prosecution's staff has. We sent for the photograph but it has not arrived. Now, later on we will probably ask that his photograph be admitted into evidence but at the present time we have no photograph and for that reason we are willing to go through with this.

COLONEL HAMBY: The Commission will take a short recess.

(Short recess.)

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: San Agustin, you are still under oath.

CROSS-EXAMINATION (Cont'd)

BY LIEUTENANT MC CULLOUGH:

Q Now, you have stated that you could recognize Hamamoto by sight, is that correct?

A Yes.

Q How many times on the Island of Guimaras did you see Hamamoto?

A Plenty of times after we were set free.

Q When did you first see him on that island?

A The first time he was assigned to that garrison.

Q When was that?

A I cannot remember the date.

Q Was that before or after the killing?

A That was before.

Q Do you know how long he was stationed in Guimaras Island?

A I cannot tell the exact length of time but it was around, something, eight to nine months.

Q I ask you to take a good look in this hearing-room and to see whether or not you can identify Hamamoto in this room.

A He is with the stripes, sir.

Q Is the man standing the one you referred to as Hamamoto?

A Yes.

Q Do you know what his rank was at the time he was on that island?

A I do not know.

Q You are positive that this man is Hamamoto?

A Yes.

Q And that that is the Hamamoto that you have referred to?

A Yes.

LIEUTENANT MC CULLOUGH: I believe it can be stipulated at this time between the prosecution and the defense that the man standing is the Hamamoto referred to in this testimony.

COLONEL HAMBY: Does prosecution agree?

CAPTAIN YARD: Yes, sir. Lieutenant McCullough, would you care to put in the first name? I have never seen the man before.

LIEUTENANT MC CULLOUGH: First name is Masafuji, rank of sergeant.

Q Do you know what day of the month of May 1944 that Edison Garganera was killed?

A No.

Q I believe that you said that you did not actually see him killed, is that correct?

A Yes.

Q I ask you if any time during the Japanese occupation you have ever seen the Japanese officer standing at this table beside me.

A No, I have not seen him.

LIEUTENANT MC CULLOUGH: Let the record show that that was General Kono I referred to.

Sir, that concludes the cross-examination.

CAPTAIN YARD: We have nothing else, sir.

COLONEL HAMBY: Questions by the Commission? There appear to be none. Witness excused.

(Witness excused.)

CAPTAIN YARD: Prosecution's next witness is Jose Hubero.

JOSE HUBERO

a witness for the prosecution, was duly sworn and testified as follows through Interpreters Genoves and Villalus:

DIRECT EXAMINATION

BY LIEUTENANT SHEPHERD:

Q What is your name?

A Jose Hubero.

Q What is your age?

A Forty.

Q Are you a Filipino?

A I am.

Q And what is your present address?

A Barrio Pagsangaan, Pavia.

Q At the time the Japanese occupied Panay Island were you living at Buenavista, Guimaras Island?

A Yes.

Q Were you working as a town policeman at the time the Japanese occupied Panay Island?

A Yes.

Q Were you forced by the Japanese to continue acting as a town policeman after they occupied Guimaras Island?

A Yes.

Q Were you present with the group of Japanese that arrested Edison Garganera?

A Yes.

Q What was the approximate date that this occurred?

A In the month of May 1944.

Q Did you know the name of any of the Japanese soldiers

that were in the group that captured or arrested Garganera?

A Yes.

Q Will you tell the Commission the names of any of the Japanese that were in that group, that you know?

A One by the name of Shinmio.

Q Where did the Japanese soldiers take Garganera after they arrested him?

A They brought him to the garrison.

Q And was he questioned at the garrison?

A Yes.

Q And were you present during his questioning?

A Yes.

Q What was the name of the Japanese that was in charge of the questioning?

A One by the name of Captain Hamamoto.

Q And, to the best of your knowledge, was the Japanese that you referred to as Captain Hamamoto in charge of the garrison?

A Yes.

Q Would you tell the Commission in your own words what the Japanese did to Garganera after they took him to the garrison?

A Upon reaching the garrison, the Japanese asked Garganera if the cigarettes and whiskies was given by him to the guerrilla and Garganera answered that he never gave anything to the guerrillas. When Edison Garganera answered that he did not give any, one of the Japanese took a piece of wood, square piece of wood, about two feet long and that piece of wood was hit on the body of Edison. The beating of Edison with that piece of wood lasted for approximately two minutes, and after that they forced Edison to lay flat on the floor and a water hose was attached to his mouth. Then through the water ho

water was poured. When the Japanese thought that his stomach was filled with water, they again beat him with a piece of wood on the stomach. Thus, the water came out from his mouth.

After that procedure he was asked again by the Japanese whether or not he gave whiskies and cigarettes to the guerrillas. Edison answered, "I never."

The third punishment was made by burning a piece of paper and while the paper was burning, placed on the hair growth on his private parts, and I actually saw the hairs burning. Later on, when Edison still persisted in his answer denying that he gave the cigarettes and whiskies, they tied his hands behind his back and brought him a little distance away where he was left standing.

The following morning, about 8:00 A.M., I saw two Japanese remove Edison Garganera from the place where he was left standing and brought to the doorway. With them was Captain Hamamoto. While Shinmio was holding Garganera, Hamamoto and himself were talking. After their short conversation they brought Edison to the edge of the wharf where he was covered with sack. Upon reaching the edge of the wharf, one Japanese held the shoulder of Edison while Shinmio stabbed him at the back with a bayonet once, removed the bayonet, and then stabbed him again; then pushed him into the water.

Q Did you see the killing of Garganera by Shinmio yourself?

A Yes.

Q Approximately how many meters were you from where the killing took place?

A More or less ten meters.

Q Do you know if the body of Edison Garganera was later buried?

A Yes.

Q Was the Japanese that you referred to as Captain Hamamoto present during the torture of Edison Garganera?

A Yes.

Q And, to the best of your knowledge, was Hamamoto in charge of the Japanese garrison at Buenavista?

A Yes.

Q Hamamoto was not present when Shinmio bayoneted Garganera, is that correct?

A No, he was at the garrison.

Q Do you recall being present when the members of the Gabo family were killed by the Japanese?

A Yes.

Q In what barrio did this take place?

A Barrio Taminla, town of Buenavista.

LIEUTENANT SHEPHERD: If the Commission please, I would like to have my last question stricken. The matters mentioned there have not been specified specifically at all and perhaps it would be best not to bring it up at this time.

COLONEL HAMBY: Strike the question.

Q To refer back to the killing of Edison Garganera: From the time that Edison was arrested until he was killed, to the best of your knowledge, did he receive a trial?

A No.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Is it correct that you are testifying as to only one killing and that is of Edison Garganera?

A That is the only one that was killed, Edison Garganera, but the other months, there were others killed.

Q In your direct testimony, though, you have referred to only one, is that correct?

A Only one, referring to Edison; but there are other killings.

Q However, in answer to the prosecution, you only talked about one, is that right?

A Only one. I was only referring to one because only one was referred to in his question, but if there are others, I can also say about them.

Q Did you participate in the arrest of Edison Garganera yourself?

A I did not help in the arrest of Garganera; they only brought me with them.

Q Do you know who gave the Japanese information about Edison Garganera being a guerrilla suspect?

A I do not know.

Q Do you know who the guerrilla leader on Guimaras Island was during May of 1944?

A I do not know.

Q Did you ever hear of the name of Colonel Luis Dator?

A No, I did not hear.

Q Of [redacted]Vez?

A I heard but I never saw.

Q Where was the Japanese garrison in Buenavista during May 1944?

A At Santo Rosario near the river at Buenavista.

Q How many Japanese soldiers were stationed there during May of 1944?

A I did not count.

Q Would you say there were less than ten?

A My estimate is more or less about twelve.

Q How many times did you see the Captain Hamamoto that you told about?

A I used to see him frequently because I was living near the place of the garrison.

Q Did you work for the Japanese during the occupation as a policeman yourself?

A The Japanese established a civil government and as I was working under the Commonwealth Government before the war, they forced me to return to my former position.

Q How frequently did you see the Hamamoto that you referred to?

A I saw Hamamoto several times because usually I see him daily.

Q Do you know how long you were stationed at Buenavista on Guimaras Island?

A I cannot remember.

Q Would you be able to identify the Hamamoto that you referred to now if you saw him?

A I don't know but if he is there I might identify him.

Q You saw him quite frequently, is that correct?

A Yes, while he was still at Buenavista.

Q Did you see the Japanese who arrested Edison Garganera take any papers from him either during the time that he was questioned or during the time that he was beaten or mistreated?

A I do not know.

LIEUTENANT MC CULLOUGH: May I ask the Commission's indulgence while we make another identification test.

Q Now, I ask you carefully to look over the five men who were just brought into the room here, and state if you can the identity of any one of them.

A Shall I point him out?

Q All right. Point one of them out.

A (Indicating) This one is Captain Hamamoto.

CAPTAIN YARD: Tell him to get down from the witness stand and point to him directly.

(Witness does so.)

LIEUTENANT MC CULLOUGH: Let the record again show that it is stipulated between the prosecution and defense that the person he pointed out is Sergeant Masafuji Hamamoto.

COLONEL HAMBY: So ordered.

Q I again ask you if at any time during the Japanese occupation you ever saw the Japanese officer standing here at this table beside me now.

A Never.

LIEUTENANT MC CULLOUGH: Again let the record show that I referred to General Kono. Sir, that concludes the cross-examination.

COLONEL HAMBY: Redirect.

LIEUTENANT SHEPHERD: No more questions.

COLONEL CHASE: Will you try to clear up something here. The witness before referred to Hamamoto as a

noncommissioned officer whose rank he did not know. He has been previously referred to this morning as Captain Hamamoto and the defense counsel gave it as "sergeant." I should like to get that straight.

LIEUTENANT MC CULLOUGH: I believe it can be agreed between the prosecution and the defense that his actual rank was that of a sergeant.

No more questions.

CAPTAIN YARD: Prosecution's next witness is Aniceto Hoyan.

noncommissioned officer whose rank he did not know. He has been previously referred to this morning as Captain Hamamoto and the defense counsel gave it as "sergeant." I should like to get that straight.

LIEUTENANT MC CULLOUGH: I believe it can be agreed between the prosecution and the defense that his actual rank was that of a sergeant.

No more questions.

CAPTAIN YARD: Prosecution's next witness is Aniceto Hoyan.

ANICETO HOYAN

a witness for the prosecution, was duly sworn and testified as follows through Interpreters Villaluz and Genoves:

LIEUTENANT MC CULLOUGH: Subject to objections by the defense and with permission of the Commission, we would like to correct the spelling of Aniceto Hoyan in Specification No. 47. There "Hoyan" is spelled with a "m"; it should be with an "n."

COLONEL HAMBY: So ordered.

DIRECT EXAMINATION

BY LIEUTENANT SHEPHERD:

Q What is your name?

A Aniceto Hoyan.

LIEUTENANT SHEPHERD: If the Commission please, the testimony of this witness will relate to Specification 47.

Q What is your age, Mr. Hoyan?

A Seventy-five.

Q Are you a Filipino?

A Filipino.

Q Where do you live?

A Barrio Banban, Buenavista, Iloilo.

Q During the time the Japanese occupied Guimaras Island were you captured by them at any time?

A Yes.

Q Do you recall the approximate date when you were captured?

A I cannot remember the date but I can remember the month and the year: December 1944.

Q And in what barrio were you captured by the Japanese?

A Barrio Supang.

Q How many Japanese soldiers were in the group that captured you?

A I cannot count; I cannot estimate how many there were. I know there were plenty.

Q And who besides yourself was captured by the Japanese with you?

A My son was with me, Eugenio Hoyan.

Q Where did the Japanese take you and your son Eugenio?

A We were brought to a house where the Japanese were gathered, including their captain and the puppet mayor, Candido Yngalla.

Q Did you see any other civilians there who had been captured by the Japanese?

A Yes.

Q Were there any members of your family in that group?

A Yes.

Q Would you tell the Commission the names of the members of your family in that group?

A Demetrio Hoyan; his wife, Estrella de la Torre; and there were two small daughters: Thelma Hoyan and Norma Hoyan.

Q Now, were you questioned by the Japanese at this time?

A No.

Q Were the Japanese questioning other civilians in the group?

A During the time I was there I did not see any civilians being questioned by the Japanese.

Q What happened to your son Eugenio?

A You will please excuse me for a moment. What I can say now, first, is the elder brother of Eugenio.

Q Do I understand you to say that you want to tell what happened to Demetrio first, is that correct?

A Yes.

Q All right. Continue.

A Upon reaching the place of the house I saw my son, Demetrio Hoyan, with his hands tied behind his back. They placed me on the place approximately the distance between the place where I sit now and that post (indicating).

LIEUTENANT SHEPHERD: Let the record show the distance to be fifteen feet.

COLONEL HAMBY: Agreed.

A (Continuing) One of my sons was not tied and he was ordered to pound the palay. About five-thirty in the afternoon they took my son Demetrio from the place where he was standing. They removed him from that place and they passed by me, in front of me, and brought him to a place about twelve meters away. They went to that place about twelve meters away with two Japanese, one with a piece of wood; together with them was the Japanese captain and Candido Y[illegible]alla. Upon reaching there the Japanese with a piece of wood beat my son several times with that same piece of wood. When my son was hit somewhere in the back of his head he slumped to the ground, face downward. He died. When they saw that Demetrio was dead they also took Eugenio, my younger son, tied his hands behind his back and brought him to the place where my first son was killed, near the place where he actually died. Upon arriving there the same procedure was followed.

(Witness weeps.)

COLONEL HAMBY: The Commission will recess until 1300.

(The Commission recessed at 1130 hours.)

AFTERNOON SESSION

(The Commission convened, pursuant to recess, at 1300, 22 April 1946.)

COLONEL HAMBY: The Commission is now in session.

LIEUTENANT SHEPHERD: Will the interpreter remind the witness that he is still under oath?

(The interpreter translated to the witness.)

CAPTAIN YARD: Sir, may the record show that all members of the Commission, the accused together with his defense counsel and personal interpreter, and members of the prosecution are present.

LIEUTENANT SHEPHERD: Will the reporter read the last answer please?

(The last answer was read by the reporter.)

DIRECT EXAMINATION (CONT'D.)

BY LIEUTENANT SHEPHERD:

Q What happened to your son, Eugenio?

A He was tied and brought at the place near the location where his other brother died. He was beaten with a piece of wood by the Japanese. After my son received many blows, he shouted, "Father, father, help me!" He said, "Father, I cannot do anything because I am tied." And I answered back, "Son, I cannot do anything; I, too, am tied."

Q What happened next.

A He fell down, lying on one of his sides. He was still breathing, and the Japanese seeing this, took hold of his saber and beheaded him.

Q Then, you, yourself, actually saw both of your sons killed by the Japanese, is that correct?

A Yes, I saw.

Q Do you know the names of any of the Japanese that were present when your sons were killed?

A I don't know others.

Q Do you know the name of the Japanese that you refer to as "The Captain"?

A I heard his name mentioned by the mayor as Captain Hamamoto.

Q Would you be able to recognize Hamamoto if you saw him again?

A I cannot recognize.

Q Is it because your eyes are poor?

A Aside from the fact that my eyes does not have very good sight, that was the only time when I came near to the Japanese.

Q And you do not believe that you could identify him if you saw him again, is that correct?

A I cannot recognize.

Q Do you know the name of the person who told you that it was Hamamoto who was present when your sons were killed?

A He is Yngalla.

Q Were you later told of the death of Estrella de la Torre, the wife of your son Demetrio?

A Yes.

Q And who told you of her death?

A Muega was the one who told me.

Q Was Muega a Filipino working for the Japanese?

A Yes.

Q Is he now dead?

A Already dead.

Q What did he tell you about the death of your daughter-in-law?

A All he told me was that the wife of Demetrio is already dead.

Q Did he tell you who killed her?

A He told me that it was the Japanese soldiers who killed Estrella.

Q Did you bury her body?

A Three days after the Japanese left I went to visit the corpses. In one place I saw the cadavers of my two sons and in another place I saw a pile of dead people. Among that pile I saw Estrella, the wife of my son. I also saw a woman, a dead woman, with a child in her arms, also dead.

Q Do you know who killed these other civilians whose dead bodies you saw?

A I only heard the Japanese soldiers killed them, although personally I did not see the actual killing.

Q Were your sons given a trial by the Japanese before they were killed?

A No.

Q Were your sons guerrillas?

A No.

Q Do you know any reason for the Japanese to have killed them?

A I do not know.

Q Mr. Hoyan, would you give, to the best of your ability, an estimate of the number of people that you saw dead on the pile on which your daughter-in-law was?

A Ten: two women, one baby girl, three boys of 12 years old, more or less -- all in all there were three women and seven men.

Q What did he tell you about the death of your daughter-in-law?

A All he told me was that the wife of Demetrio is already dead.

Q Did he tell you who killed her?

A He told me that it was the Japanese soldiers who killed Estrella.

Q Did you bury her body?

A Three days after the Japanese left I went to visit the corpses. In one place I saw the cadavers of my two sons and in another place I saw a pile of dead people. Among that pile I saw Estrella, the wife of my son. I also saw a woman, a dead woman, with a child in her arms, also dead.

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A Ten: two women, one baby girl, three boys of 12 years old, more or less -- all in all there were three women and seven men.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Were both of your sons killed on the same day?

A Yes.

Q Do you know what day in December, 1944 that was?

A I cannot remember the date.

Q Were they both killed in the barrio of Supang?

A Yes.

Q How far is that barrio from barrio of Buenavista?

A Seven kilometers.

Q How long afterwards, then, did you run into these bodies among which was Demetrio's wife?

A After three days the Japanese left.

Q Was that also in December of 1944?

A Yes.

Q Do you know whether that was in the first half of the month or in the last half of the month?

A I cannot remember the dates because I did not have a calendar.

Q Did you know the Hamamoto that you described as being the captain?

A I don't know.

Q Did you ever see Hamamoto anywhere on Guimaras Island after October 1944?

A As I said before, that day of atrocities was the only day when I saw the face of the Japanese because I always hid.

Q Now, those faces of those Japanese that you saw, did you recognize any of them by name?

A I don't know.

Q I believe you said that you didn't know who killed any of the ten people, that is, the seven men and the three women that you testified about; is that correct?

A I don't know.

Q Do you know whether or not any of these people who were killed in either of these incidents were guerrillas?

A None.

Q Do you know how many --

A (Continuing) My two sons?

Q All right. Take first your two sons. Were they guerrillas?

A No.

Q Now, do you know whether any of the seven men or three women who were killed were guerrillas?

A They were not guerrillas.

Q How do you know that?

A They were residents of barrio Supang.

Q I believe you stated the one time that your eyesight was not too good and for that reason it was difficult for you to make positive identification, is that correct?

A Yes.

Q Can you see this Japanese officer standing beside me now?

A I can see him but not to recognize his face.

Q Come up a little closer to the person standing by me. Now. do you recognize him?

A No.

LIEUTENANT MC CULLOUGH: Let the record show that I was referring to General Kono, and also may it show that the first question was asked when the witness was approximately 15 feet from him and the second question

was asked when he was approximately five feet from him.

No further cross-examination.

LIEUTENANT SHEPHERD: Commission any questions?

COLONEL HAMBY: Commission any questions? Apparently not. The witness is excused.

(Witness excused.)

CAPTAIN YARD: The prosecution's next witness is Pablo Poblador.

(To interpreter): Will you ask him how old he is?

THE WITNESS (Through Interpreter): Fourteen.

CAPTAIN YARD (To Interpreter): Ask him if he knows what an oath is.

THE WITNESS (Through Interpreter): No.

CAPTAIN YARD (To Interpreter): Ask him if he knows if he should tell the truth here before the Commission and what would happen to him if he doesn't tell the truth.

THE WITNESS (Through Interpreter): Yes, I know.

CAPTAIN YARD. (To Interpreter): All right. Will you tell him that when he raises his hand and we repeat the oath to him it will mean that he will tell the truth as a good boy before God.

THE WITNESS: (Through Interpreter): Yes.

was asked when he was approximately five feet from him.

No further cross-examination.

LIEUTENANT SHEPHERD: Commission any questions?

COLONEL HAMBY: Commission any questions? Apparently not. The witness is excused.

(Witness excused.)

CAPTAIN YARD: The prosecution's next witness is Pablo Poblador.

(To interpreter): Will you ask him how old he is?

THE WITNESS (Through Interpreter): Fourteen.

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THE WITNESS (Through Interpreter): Yes, I know.

CAPTAIN YARD. (To Interpreter): All right. Will you tell him that when he raises his hand and we repeat the oath to him it will mean that he will tell the truth as a good boy before God.

THE WITNESS: (Through Interpreter): Yes.

PABLO POBLADOR

a witness for the prosecution, was duly sworn and testified as follows through Interpreters Genoves and Villaluz:

LIEUTENANT SHEPHERD: If the Commission please, this witness' testimony will relate to Specification 48.

At this time prosecution would like to correct a date in this specification. This matter has been mentioned to the defense counsel on the 13thof April and I believe there will be no objection by the defense counsel. We would like to change the date from"October or November 1944" to "June or July 1944."

LIEUTENANT MC CULLOUGH: We have no objection to the correction as made by the prosecution. However, we do not admit that the atrocity under Specification No. 48 was under General Kono's command. It was, in fact, a separate command of the Division Headquarters.

COLONEL HAMBY: The statement of defense counsel is taken cognizance of by the Commission and the Commission orders the correction in the specification as requested to "June or July 1944."

DIRECT EXAMINATION

BY LIEUTENANT SHEPHERD:

Q What is your name?

A Pablo Poblador.

Q And how old are you, Pablo?

A Fourteen.

Q Are you Filipino?

A Yes.

Q Where do you live?

A Malonang, Zaraga, Iloilo.

Q While the Japanese were on Panay Island, did you work for the guerrillas?

A Yes.

Q During this time were you arrested by the Japanese?

A Yes.

Q Do you recall the approximate date when the Japanese arrested you?

A No.

Q Do you know if it was in the year 1944?

A Yes.

Q But you don't remember the month, is that correct?

A Yes.

Q What did the Japanese do with you after they arrested you?

A I was brought to the Iloilo High School.

Q And were you kept a prisoner there?

A Yes.

Q Were you questioned by the Japanese?

A Yes.

Q Did the Japanese later take you from the prison?

A Yes.

Q Do you remember the month when this occurred?

A When the Japanese removed me from the prison?

Q Yes.

A June.

Q Do you remember what part of June it was?

A No.

Q Did the Japanese take you by yourself from the prison, or were there others taken with you?

A I was the only one.

Q And what did the Japanese do with you?

A They brought me to the truck and inside the truck were already four boys.

Q Do you know the names of any of the four boys that were in the truck?

A I only know the nickname of one of them; the three I did not know.

Q What is the nickname of the one that you do know?

A "Dimple." D-i-m-p-l-e.

Q I hand you a photograph which has been marked for purposes of identification as Prosecution's Exhibit No. 29 and ask you whose picture it is.

Q What did the Japanese do with you after they arrested you?

A I was brought to the Iloilo High School.

Q And were you kept a prisoner there?

A Yes.

Q Were you questioned by the Japanese?

A Yes.

Q Did the Japanese later take you from the prison?

A Yes.

Q Do you remember the month when this occurred?

A When the Japanese removed me from the prison?

Q Yes.

A June.

Q Do you remember what part of June it was?

A No.

Q Did the Japanese take you by yourself from the prison, or were there others taken with you?

A I was the only one.

Q And what did the Japanese do with you?

A They brought me to the truck and inside the truck were already four boys.

Q Do you know the names of any of the four boys that were in the truck?

A I only know the nickname of one of them; the three I did not know.

Q What is the nickname of the one that you do know?

A "Dimple." D-i-m-p-l-e.

Q I hand you a photograph which has been marked for purposes of identification as Prosecution's Exhibit No. 29 and ask you whose picture it is.

A This is "Dimple."

Q And this boy whose picture I have shown you was on the truck when you got there with three other boys, is that correct?

A He is the one whose nickname is Dimple.

LIEUTENANT SHEPHERD: Subject to objection by the defense, I offer into evidence this picture as Prosecution's Exhibit 29.

LIEUTENANT MC CULLOUGH: I have no objections.

COLONEL HAMBY: So ordered.

(Prosecution's Exhibit 29 was received in evidence.)

Q After you and the other boys were put on the truck how many Japanese soldiers were on the truck with you?

A More or less ten Japanese.

Q Did you know the names of any of the Japanese?

A I only knew one Japanese, and another Japanese spy, Juan Sumagaysay.

Q What was the name of the Japanese whose name you knew?

A Motoki.

Q I hand you Prosecution's Exhibit No. 12 and ask you if this is the picture of the Motoki you have mentioned.

A Yes.

Q And this man was on the truck when you were taken away from the prison with the four other boys, is that true?

A Yes.

Q Did he appear to be in charge of the group of Japanese?

A Yes.

Q Where did the Japanese take you on the truck?

A Villa Beach.

Q And near what barrio is Villa Beach located?

A I do not know.

Q Is it near Arevalo?

A Near Arevalo.

Q After the truck arrived at Villa Beach, what happened next?

A The truck stopped about ten meters away from the water.

Q And what did the Japanese do next?

A The four boys were brought to the sea by Motoki and Sumagaysay. The rest of the Japanese were only watching.

Q Were you left in the truck with the rest of the Japanese?

A Yes.

Q Where did Motoki and the other man take the four boys?

A They were brought to the seashore.

Q And what happened to the four boys then?

A Upon arriving at the seashore the boys were ordered to stoop their heads. In that position Motoki beheaded them one by one with a saber.

Q You saw Motoki behead the four boys, is that true?

A I only saw three because on the forth I face backwards because I was thinking I will be also the fifth.

Q How many meters were you from where you saw the three boys beheaded?

A More or less ten meters.

Q What happened after the boys were beheaded?

A They were left where they were.

Q I show you this photograph that is Prosecution's Exhibit 29 and that you have identified as the boy, Dimple, and ask if you saw him beheaded.

A Yes.

Q Why didn't Motoki behead you?

A Before we were brought to Villa Beach the mayor of Zaraga, Baclay, was trying to bail me.

Q What happened after the boys were killed?

A We went back to Iloilo.

Q Who was on the truck that went back to Iloilo?

A We were only two Filipinos in the truck, one Sumagaysay and myself and the other Japanese.

Q Did Motoki go back on the truck with you?

A Yes.

Q And Sumagaysay whom you have mentioned is the Filipino spy who went with Motoki to behead the three boys, is that correct?

A Yes.

Q But none of the four boys who were taken out with you went back on the truck with you, is that right?

A No.

Q Were you later released by the Japanese?

A Yes.

LIEUTENANT SHEPHERD: Your witness.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q There were four people killed altogether, four boys, is that correct?

A Yes.

Q How far is the Villa Beach from the barrio Arevalo where you lived?

A I don't live at Arevalo.

Q Where do you live?

A I live at Zaraga.

Q How far, then, is Villa Beach from Zaraga?

A It's far; I don't know how far.

Q How long did it take you to ride on a truck from Zaraga to Villa Beach?

A I do not know.

Q Let me ask you again, how far is the garrison at Iloilo City from Villa Beach?

A I do not know because that was the only time when I went to the Villa Beach.

Q You previously said you rode in a truck, is that right?

A Yes.

Q Are you sure that you were on that truck with the other four boys?

A Yes.

Q Are you sure there were ten soldiers, or only two, on the truck at that time?

A Ten.

Q How long did it take you to get to Villa Beach?

A I do not know.

Q When were these boys executed?

A After St. John.

Q Is the St. John that you refer to a holy day in June?

A I don't know.

Q Do you know what month the killing took place in?

A I do not know.

Q Are you sure that it was either in June or July of 1944?

A June.

Q How do you remember that it was in June?

A Because I remember.

Q Do you remember it because it happened on one of the holy days in June?

A St. John?

Q Now, what do you mean by "St. John"?

A The time of the arrest or the killing?

Let's take first the time of the arrest. When were they arrested?

I can't recall but it was in the month of June.

Q Then the time of the killing, do you recall when that was?

A After St. John.

LIEUTENANT MC CULLOUGH (to interpreter): Is he saying "St. John" or "St. Joan"?

INTERPRETER VILLALUZ: St. John.

Q Was it on St. John Day or San Juan Day that this killing took place?

A The day after St. John.

Q How did you learn Motoki's name?

A I have been working under him for some time and I was also informed by Japanese interpreters.

Q When did you start working for him?

A From the time after the killing.

Q How long, then, did you work for him?

A More or less one month.

Q Did you work for him one week or one month?

A One week.

Q Where, then, did you work for him that week?

A At the Iloilo High School.

Q What did you do for him?

A I used to buy cigarettes for him.

Q Was that also in the month of June?

A Yes.

Q Do you know what his rank was at that time?

A He was a lieutenant.

Q When was the last time you saw Motoki?

A That time when he released me.

Q Have you ever seen him since that time?

A No more.

Q How far were you from where these four boys were killed?

A Ten meters.

Q And will you tell me again who killed the four boys?

A Motoki.

Q Did he kill all four of them?

A I only saw him kill the three.

Q Do you know who killed the fourth one?

A I did not see because when I looked to them again they were already on their way to the truck.

Q Do you know whether Dimple was the first one killed or the last one killed?

A The first.

Q How well did you know these other four boys?

A Yes, I know them well.

Q What did they do before they were arrested?

A I do not know what they were doing.

Q Do you know whether they worked for the guerrillas or as spies for the guerrillas?

A They were spies of the guerrilla.

Q What did you yourself do for the guerrillas?

A I was only going with them.

Q Did you also act as a spy for the guerrillas?

A My work consisted of buying cigarettes for them in the town because they cannot get inside the town.

Q Who do you mean by "them"?

A The soldiers.

Do you mean the guerrilla soldiers?

Yes.

Was it a practice of the guerrillas to make use of small boys as spies?

Yes.

Q Did they also use women as spies?

A I don't know; I have not seen women.

Q At the time you took these cigarettes out to the guerrillas did you give them certain information?

A Yes.

Q How many guerrillas were in that area at that time, if you know?

A I do not know.

Q Who did you give your information to?

A To soldiers who asked me to buy cigarettes.

Q Do you know how many Japanese were stationed in Iloilo at that time?

A No.

Q Did you give any information about the Japanese and their activities in their headquarters to the guerrillas at that time?

A No.

Q What kind of information did you give these guerrillas when you took to them their cigarettes?

A I told them that there were a truck that goes to the mountains.

Q Do you know about any of the boys there that were working either with you or any place in Iloilo City about that time throwing hand grenades at the Japanese soldiers or at their buses?

A No.

Q Did you ever hear of boys in Iloilo down there at that time throwing hand grenades at the railroad trains in which there were Japanese soldiers?

A No.

Q I believe you said that you gave them information about a truck going to the mountains, is that correct?

A Yes.

Q Do you know whether or not the guerrillas ambushed that truck with Japanese in it when it went to the mountains?

COLONEL HAMBY: Rephrase the question.

Q Do you know whether or not the guerrillas made any attempt to stop the truck that the Japanese were in going to the mountains that day?

A No, I do not know.

LIEUTENANT MC CULLOUGH: Sir, that is all the cross-examination.

LIEUTENANT SHEPHERD: Has the Commission any questions?

EXAMINATION BY THE COMMISSION

BY COLONEL HAMBY:

Q Can you tell the Commission why the Japanese, Motoki, beheaded these four small boys?

A Yes, Juan Sumagaysay pointed them.

COLONEL GOFF: What is "Sumagaysay"?

LIEUTENANT SHEPHERD: He is the Filipino spy whom we had mention of before.

COLONEL HAMBY: Any other questions by the Commission? The witness is excused. The Commission will take a short recess.

(Short recess.)

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: The prosecution's next witness is Margarita Rodriguez.

MARGARITA RODRIGUEZ

a witness for the prosecution, was duly sworn and testified as follows through Interpreters Genoves and Villaluz:

LIEUTENANT SHEPHERD: This witness' testimony will be on the same Specification 48.

DIRECT EXAMINATION

BY LIEUTENANT SHEPHERD:

Q What is your name?

A Margarita Rodriguez.

LIEUTENANT SHEPHERD: The witness speaks pretty good English, sir, but we are still using an interpreter for our own sake just so there will be no mistake.

Q Margarita, when I ask you these questions I will ask you through the interpreter, so you wait until he asks the question before answering.

A Yes.

Q How old are you?

A Twenty-five.

Q What is your nationality?

A Filipina.

Q And where do you live?

A Osmena Street, Arevalo, Iloilo City.

Q Is Villa Beach part of Arevalo?

A Yes.

Q And how far is Arevalo from Iloilo City?

A Six-and-a-half kilometers.

Q While the Japanese occupied Panay Island, did they at any time arrest you?

A Yes.

Q Do you recall the approximate date of your arrest?

A 24 of June.

Q And what year was it?

A 1944.

Q How long were you kept imprisoned?

A Four days and four nights.

Q So that you were released on approximately the 28th of June, is that correct?

A I am not sure of the exact date but after four days I was released.

Q Could you tell the Commission what day in June is St. John's Day?

A Twenty-fourth of June.

Q And does St. John's Day always come on the 24th of June, every year?

A Yes.

Q Were there any other civilians arrested with you?

A Yes.

Q Would you tell me their names?

A Dimzon, Jose; Eriberto Pavillar.

Q What other persons were arrested at this time?

A We call him of the nickname "Esting" Parcon; Andres -- I don't know the surname; Jesus; no more. Including myself, six.

Q I hand you Prosecution's Exhibit No. 29 and ask you whose picture it is.

A Eriberto Pavillar.

Q Did Eriberto have a nickname, "Dimples"?

A Yes.

Q What was the age of Eriberto Pavillar.

A More or less sixteen years.

Q And what was the approximate age of Esting Parcon?

A More or less eighteen years.

Q And Jesus -- what was his approximate age?

A The same.

Q And Andres?

A The same.

Q So Eriberto was about sixteen years old, and Esting, Jesus and Andres were about eighteen years old; is that right?

A Yes.

Q While you were imprisoned by the Japanese were you questioned by any of them?

A Yes. And we were also beaten.

Q Do you know the name of any of the Japanese that questioned you?

A One of the officers I did not know.

Q Do you know the names of any of the Japanese?

A Yes.

Q And what was that name?

A Motoki.

Q I hand you Prosecution's Exhibit No. 12 and ask you whose picture it is.

A Motoki.

Q And that's the picture of the Japanese officer who questioned you, is that correct?

A He was in charge.

Q Did you, while you were in prison, see Pablo Poblador?

A Not yet.

Q When you were released from prison on approximately the 28th of June, who was released with you?

A My brother-in-law.

Q Then Eriberto, Jesus, Andres and Esting were still in the prison when you were released, is that correct?

A Yes.

Q When was the next time that you saw these boys?

A Two days after I was released.

Q So it was about the 30th of June that you next saw them, is that correct?

A Yes.

Q Will you tell the Commission the circumstances under which you next saw these boys?

A The next time I saw them they were brought to Villa Beach. They were brought on the seashore.

Q And where were you when they were brought to Villa Beach?

A I was under the coconut trees gathering firewood.

Q And were the boys in a truck?

A Yes.

Q When the truck passed you with the boys in it, approximately how many meters from the truck were you?

A More or less ten meters.

Q And you were hidden from sight, is that correct?

A Yes.

Q What Filipinos did you recognize on that truck?

A Pablo Poblador.

Q Did you recognize any others on the truck when it first passed you?

A Motoki.

Q And where was Motoki sitting?

A At the front seat.

Q Was he driving the truck?

A No.

Q Was he sitting next to the driver?

A Yes.

Q Did you see any other Filipinos in the truck when it first passed you?

A No others except the four boys that were killed.

Q Did you see Eriberto Pavillar in the truck?

A Yes.

Q Did you see Esting Parcon in the truck?

A Yes.

Q Did you see Jesus in the truck?

A Yes.

Q And did you see Andres in the truck?

A Yes.

Q Were there Japanese soldiers in the truck also?

A Yes.

Q About how many Japanese soldiers would you estimate were in the truck?

A More or less ten.

Q Does that include Motoki and the driver of the truck?

A Not included.

Q Is this the first time you had seen Pablo Poblador?

A Before we were put in prison I already saw him.

Q After the truck passed you did you see it stop or did it continue out of your sight?

A The truck stopped.

Q Did you stay and see what happened or did you leave the scene at that time?

A I just hid myself and observed what might will happen.

Q Did you see the boys killed?

A I did not see it clearly because the soldiers were surrounding them.

Q How far were you hidden from where the truck stopped?

A More or less 15 meters.

Q And when the truck returned and passed you, how many Filipinos were on the truck?

A One.

Q And who was that?

A Pablo.

Q Was Motoki sitting next to the driver when the truck returned?

A Yes.

Q Did you go down to where the truck had stopped after they left?

A No.

Q Did you see the bodies of the boys?

A Yes.

Q Whose bodies did you see on the beach?

A Eriberto, Jesus, Andres, and Esting.

Q Were the heads severed from the bodies?

A One was stabbed with bayonet, three were beheaded.

Q And did you see the faces of the boys at that time so that you could identify them?

A Yes.

LIEUTENANT SHEPHERD: Your witness.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Why were you arrested on St. John's Day?

A I do not know why they caught me.

Q Had you ever given any information to the guerrillas about the Japanese?

A Sometimes.

Q Do you know whether or not that's why they arrested you?

A Some of the spies were envious of us.

Q Why were other spies envious of you?

A Because whatever they need we cannot give them at once.

Q Were you able to give it to them later?

A Seldom.

Q How many women were working with you as spies in that vicinity?

A We were not spies. We only give information to the guerrillas once in a while.

Q What kind of information did you give them?

A Whatever happened to us inside we tell to the guerrillas.

Q Did you tell them what the Japanese were doing?

A Sometimes we don't, but sometimes we tell them that they have operations on the outside.

Q Do you know why that information was given to the guerrillas?

A I do not know.

Q How far were you from the place where these four young men were killed?

A More of less 15 meters.

Q Did you see who actually did the killing of those four?

A I was not able to see because they were surrounded by the Japanese soldiers.

Q Did you actually see Motoki kill any of them?

A I was not able to see because he was at the center.

Q Do you know who actually did the killing of any one of them?

A I do not know.

LIEUTENANT MC CULLOUGH: Sir, that is all the cross-examination.

COLONEL HAMBY: Questions by the prosecution?

LIEUTENANT SHEPHERD: No, sir.

EXAMINATION BY THE COMMISSION

BY COLONEL HAMBY:

Q What was the date these four boys were killed?

A Two days after I was released.

Q And what day was that?

A The day I was released?

Q Either one. The day you were released or the day in June when these boys were killed.

A More or less 30th of June.

COLONEL HAMBY: No other questions. The witness is excused.

(Witness excused.)

CAPTAIN YARD: Prosecution's next witness, sir, is Juanito Diaz.

JUANITO DIAZ

a witness for the prosecution, was duly sworn and testified as follows through Interpreters Genoves and Villaluz:

CAPTAIN YARD: The testimony of this witness, sir, relates to Specification 49.

DIRECT EXAMINATION

BY CAPTAIN YARD:

Q What is your name?

A Juanito Diaz.

Q How old are you?

A Eighteen years.

Q What is your nationality?

A Filipino.

Q Where do you reside?

A Bacolod, Negros.

Q Before coming up here were you living at the Civilian Detention Camp at Bacolod, Negros?

A Yes.

Q And are you now being held in the stockade of the High Commissioner's Residence here?

A Yes.

Q Are you under charges as a collaborator?

A Yes.

Q In April 1945, were you working for the Japanese in Negros?

A Yes.

Q About the middle of April 1945, where were you?

A I was there. I joined with the Japanese to go to the mountains.

Q Were you working as a cargador at that time?

A Yes.

Q And about the middle of April 1945 were you in the San Juan mountains?

A Yes.

Q And is that in Silay?

A Yes.

Q Negros Occidental?

A Yes.

Q While you were in the mountains did you hear that an American plane had been shot down?

A Yes.

Q Who told you about it?

A One of the Japanese. His name was Aremetzu.

Q Did you see the plane?

A No.

Q Did you hear that there was a survivor of this crash?

A Yes.

Q Did you see this survivor?

A Yes.

Q Where did you see him?

A I saw him at the quarters of Kono.

Q You mean Lieutenant General Takeshi Kono?

A Yes.

Q Do you see that man in this courtroom?

A Yes.

Q Will you point him out?

A (Indicating)

(Accused rises.)

Q Is that the man?

A Yes.

Q Did you see him at his headquarters?about the time this plane was shot down?

A I went to the headquarters of General Kono the day after the airplane crash.

Q Did you see the survivor of the plane crash at that time?

A Yes, I saw.

Q What time of the day did you see him?

A More or less two in the afternoon.

Q How tall was this man whom you saw?

A My estimate is that the American was a little over six feet.

Q About how heavy was he?

A 180 pounds more or less.

Q What was the color of his hair?

A Yellowish;blonde.

Q What was the color of his skin?

A White.

Q Did someone tell you that he was an American?

A Yes.

Q And that he was a survivor of the plane crash?

A Yes.

Q When you first saw him what were they doing with him?

A The first time I saw him, Hamada was beating him with a piece of wood. He was bleeding; his face was bleeding. And they also touch his ears with burning cigarettes.

Q Did you see them mistreat him in any other way?

A I did not see other than that.

Q Was that inside some type of a building?that this was going on?

A Yes.

Q And could you see into the building?

A Yes.

Q How far away were you from where they were beating and otherwise mistreating this American?

A More or less five meters.

Q What kind of clothes did he have on?

A He was wearing khaki pants and his shirt was already cut -- shirt sleeves. I could see that it used to be a shirt of long sleeves, but at that time it was already cut.

Q Was he being questioned?

A Yes.

Q Where was he being beaten?

A He was hit on the side.

Q With what was he hit?

A A piece of wood.

Q And was it Hamada that was hitting him?

A Yes.

Q Did you see any of the other officers there, or any other Japanese there besides Hamada?

A I don't know the others because I was not working with Kono.

Q Did you see General Kono there at the time?

A Yes, I saw him.

Q Was he present in the same room where this American was being mistreated?

A Yes.

Q I show you Prosecution's Exhibit 6 and ask you whose picture that is.

A It is Watanabe.

Q Did you ever see that man around the Kono headquarters in Negros?

A He was there when the Japanese killed the Americans and also when they surrendered to the Americans.

Q But when you saw this American being tortured was Watanabe there?

A I did not see him there.

Q How long did you stay on that afternoon?

A Thirty minutes.

Q And when you left were they still questioning and mistreating this American?

A No more.

Q Was he bleeding?

A He was bleeding on the face.

Q What did his physical condition appear to be?

A He was very weak.

Q When did you next see this American?

A About four-thirty that same afternoon.

Q And where was he when you saw him?

A I saw him kneeling in front of a hole with two hands tied behind his back, and his eyes blindfolded.

Q What time was that?

A More or less 5 P.M.; it was beginning to be dark.

Q Was that the same day you saw him beaten?

A Yes.

Q Was this hole where he was kneeling near the headquarters of Kono?

A A distance away.

Q How far away?

A On the other side of the mountain.

Q Did you recognize any of the Japanese who were there beside the hole?

A Yes.

Q Will you name them.

A Kono, Watanabe, Hamada. These were the only three I knew at that time.

Q This man to whom you have previously pointed, the accused, was at the hole where the American was kneeling?

A Yes.

Q And the man whose p[redacted]raph I showed you on Prosecution's Exhibit 6, he was there at the hole where the American was kneeling (handed to witness)?

A Yes.

Q What was done with the Americans?

A Hamada hacked the neck of the American with a sword.

Q Do you mean beheaded him?

A Yes, hacked and beheaded.

Q Did the American's head fall off?

A Not totally. There was a portion of the skin that was attached to the body.

Q What was done with the body?

A It was buried in the very same hole.

Q Did you see it buried?

A Yes, the soldiers covered it with dust.

Q How far were you from where the killing took place?

A More or less twenty-five yards.

Q Did you actually see the execution of this American?

A Yes.

Q And was that about two-and-a-half hours after you had seen this American at the Kono headquarters?

A Yes.

CAPTAIN YARD: You may cross-examine.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Where was General Kono's headquarters in the Negros at that time?

A In the mountains of San Juan, Town of Silay.

Q How far was his headquarters from the town?

A More or less twenty-five to thirty kilometers.

Q Is his headquarters in a building, or what?

A Sort of a house.

Q Will you describe that house.

A That house was built out of trees from that same forest. The roof was made of galvanized iron.

Q Was it raised up from the ground like a lot of Filipino houses, a room set up from the ground?

A It looks similar to the height of the usual Filipino homes. It was raised from the ground.

Q How far above the ground was the first floor?

A This is the height of the flooring from the ground (indicating). It looks similar to the height of the usual Filipino homes. It was raised from the ground.

Q How far above the ground was the first floor?

A This is the height of the flooring from the ground.

LIEUTENANT MC CULLOUGH: Let the record show approximately one meter the height.

Q Was the house itself sitting on flat ground?

A No.

Q What was it?

A It was situated on top of hilly ground.

Q Was there anything unusual around the house?

A Nearby were the houses of his soldiers.

Q Were there houses surrounding his headquarters?

A Yes.

Q How close was his headquarters to the mountain?

A Very near.

Q How many other shacks or houses were there around his headquarters?

A About five houses.

Q Did you see a cave of any kind that connected any of these houses with the mountain?

A Yes.

Q What houses did the cave connect with the mountain?

A Kono's house.

Q How many rooms did his house have in it?

A I cannot say because I did not enter the house of Kono.

Q What were the walls of Kono's house made of?

A The walls were made of wood.

Q What was the floor made of?

A The wood from the forest, which was made quite well.

Q Were there any windows in this house?

A I cannot say something about that because we were only on one side of the house.

Q Was there any door in this house?

A Yes, there was.

Q Which side of the house was the door in?

A On this side.

Q Do you mean the side next to the mountain or the side away from the mountain?

A On the lower part of the mountain, going away from the mountain; away from the mountain.

Q Was that the only door in the house?

A That's what I only saw. I cannot say other than that because I did not enter that house.

Q Was it in this house that you have just described that this American aviator was taken for questioning?

A Yes.

Q Where were you while he was being questioned?

A I was outside of the doorway.

Q How far from the doorway were you?

A Five meters.

Q Was the door open or shut?

A Open.

Q How many Japanese were there in the room at the time the American was being questioned?

A There were plenty but I cannot tell you definitely the number because I was on the outside.

Q Were there any Japanese guards on the outside of the General's headquarters?

A Yes, there were.

Q Did those Japanese guards allow you within five meters of that doorway?

A Yes.

Q Do you know why they allowed you that close?

A No.

Q Do you know that no Filipinos are ever allowed that close to that house?

A I do not know.

Q But you are sure that you were within five meters of that doorway?

A Yes.

Q How large a room was it the American aviator was being questioned in?

A About the size of that office, that office where there is a guard.

CAPTAIN YARD: Indicating the room immediately in back of the courtroom.

LIEUTENANT MC CULLOUGH: Indicating a room I believe to be about twelve by twelve. Is that satisfactory?

COLONEL HAMBY: Yes.

Q Were they all standing up inside this room?

A No.

Q What were they doing?

A They were sitting.

Q Were they all sitting down?

A The interpreter was not sitting.

Q Who was the interpreter?

A Hamada and Seraise.

Q How did you know their names?

A I knew their names from the Filipinos who went with them.

Q Was there anyone inside the headquarters besides the two interpreters and General Kono?

A Yes.

Q Who was it?

A Officer of General Kono; I don't know the name.

Q How many Japanese were there altogether in that room?

A There were other soldiers and I did not count them; I cannot t ell.

Q Was there a veranda or a porch on the front of his headquarters?

A I did not see.

Q Do you know whether there was a staircase or a ladder which led up to the headquarters?

A Yes.

Q Where was that ladder? Was it on the side or on the front of the building?

A By the doorway.

Q Was the doorway on the front or on the side?

A In front.

Q Was there more than one stairway or ladder leading up to that room or rooms?

A Yes.

Q How many were there?

A I only saw one.

Q Are you sure that his headquarters only had one room?

A I am not sure; I did not go up the house.

Q Did you see inside the house from where you were standing?

A Yes.

Q I believe that you stated you stayed outside of headquarters for approximately thirty minutes; is that correct?

A Yes.

Q Where did you go then?

A We carried rice.

Q When was the next time that you saw this American aviator?

A While he was kneeling beside the hole; that was the time I saw him again.

Q How far was this from the first place you saw him?

A More or less fifteen to twenty meters.

Q Did you see who actually killed him?

A Yes.

Q Who did it?

A Hamada, the interpreter.

Q Are you positive that General Kono was there at that time?

A Yes.

Q How many time before that had you seen General Kono?

A Those were the two time I saw him: once while the aviator was being questioned in his headquarters, and the other one near the hole where the American was kneeling.

Q Had you ever seen General Kono before that?

A I have never seen him before that.

Q Have you ever seen General Kono from the time that he was near the foxhole, or when you have testified that he was near the foxhole, up to the time of this trial?

A I only see him now.

Q Is that the first time you have seen him since the killing?

A Today is the third time I saw him: first, while the American aviator was being investigated; second, while the American aviator was kneeling in front of the foxhole; and the third is today here in this courtroom.

Q Now, can you tell us on what date the American aviator was killed?

A That is one thing I cannot tell you because we did not have calendar then.

Q Was it during April of 1945?

A Yes.

Q How did you learn General Kono's name?

A We were told by the Japanese.

Q Who told you that?

A Aremetzu.

Q And who was he?

A He was an MP soldier.

Q How, then, did he happen to tell you?

A I did not know before but when he pointed out to me, that was the time he mentioned to me the name.

Q Who pointed him out to you?

A Aremetzu.

Q And was he one of the Kempei Tai on the Negros?

A Yes.

Q Did you ever work yourself for the Kempei Tai?

A I did not voluntarily work for them but the MP's captured me.

Q Do you know why they captured you?

A Yes, I know, because my father was a guerrilla; my uncle was also a guerrilla.

Q How old are you now?

A Eighteen.

Q Do you know why you are being held as a collaborator?

A No.

Q Were you promised any benefits of any kind if you would testify in this case, in so far as your own case is concerned?

COLONEL HAMBY: Rephrase your question.

Q Were you promised anything in so far as your own case is concerned if you would testify in this case?

A No.

Q Now, how did you know Watanabe's name?

A A Filipino who was working with them told me so.

Q What was his name?

A Among others there were Ricarte, Peping, Arturo, Ando, Rizal. They were the ones who told me.

Q When was the first time you saw Watanabe?

A At the time when the American was beheaded.

Q When was the last time you saw Watanabe?

A When the Japanese surrendered.

Q Did you see him any time between the time when he was there with the American aviator and the time when the Japanese surrendered?

A I only saw him at the time when the American aviator was beheaded and at the time when the Japanese surrendered to the Americans.

Q Have you ever seen him since that time?

A No.

Q While you were working for the Japanese did you ever hear of a Captain Watanabe?

A No.

Q Did you ever hear of a Major Watanabe?

A No.

Q I again hand you Prosecution's Exhibit No. 6 and ask you who that is.

A This is Watanabe.

Q You are sure that is the Watanabe you are referring to?

A Yes.

Q Do you know the rank of the American?

A No.

Q Did you ever know his name?

A No.

Q Did you ever hear of this American making any attempt to escape?

A No.

Q Did you ever hear of this American, in an attempt to escape, trying to kill one of the Japanese guards?

A No.

Q Do you know of any other area that was used for interrogation by the Japanese near the general's headquarters?

A No.

LIEUTENANT MC CULLOUGH: That is all the cross-examination.

REDIRECT EXAMINATION

BY CAPTAIN YARD:

Q Were you with Aremetzu while you saw the American being questioned?

A Yes.

Q Had he taken you there?

A Yes.

CAPTAIN YARD: Will the accused stand, please.

(Accused stands up.)

Q Are you sure that you saw this officer present when the American was being questioned?

A Yes.

Q Are you sure that you saw this officer near the hole where

the American was killed?

A Yes.

CAPTAIN YARD: That's all, sir.

COLONEL HAMBY: Questions by the Commission?

EXAMINATION BY THE COMMISSION

BY COLONEL GOFF:

Q Did you ever return to a place near Silay where the aviator was buried, was killed; have you ever been back to identify the place?

A No.

Q Did you ever know the name of the aviator?

A No.

COLONEL HAMBY: Any further questions by the Commission? The witness is excused. The Commission will take a short recess.

(Short recess.)

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: Sir, the prosecution's next witness is Ricarte Magbanua.

RICARTE MAGBANUA

a witness for the prosecution, was duly sworn and testified as follows through Interpreters Villaluz and Genoves:

DIRECT EXAMINATION

BY CAPTAIN YARD:

Q What is your name?

A Ricarte Magbanua.

Q How old are you?

A Thirty-five.

Q What's your nationality?

A Filipino.

Q Before coming to Manila were you held in Negros Island?

A Yes.

Q As a civilian detainee?

A Yes.

Q Are you under charges as a collaborator?

A Yes.

Q In April 1945 were you working for the Japanese on Negros Island?

A Yes.

Q In the middle of April 1945 were you located in the San Juan mountains?

A In the month of April we were in the mountains of San Juan.

Q And is that in Silay?

A Yes.

Q Negros Occidental?

A Yes.

Q During the middle of April 1945 did you hear that an American plane had been shot down?

(In numbering the pages of this volume, this page number, page 639, was inadvertently skipped over.)

A The interpreter told us the news.

Q Did you see the plane?

A No.

Q Did you hear what kind of a plane it was?

A We were told it was a four-engine plane.

Q Did you ever see any of the survivors of that plane?

A We were only informed that there was a survivor.

Q Did you ever see that survivor?

A I saw.

Q Where did you see him?

A Near the garrison of Kono.

Q Do you mean General Takeshi Kono?

A Yes.

Q Did you ever see General Kono in the mountains?

A Yes.

Q Do you see General Kono in the courtroom?

A Yes.

Q Will you point him out?

A That one (pointing).

Q Is that the one with the glasses?

A Yes.

CAPTAIN YARD: Have the record show that the accused stood up and the witness indicated that he was the one.

Q What time of the day did you first see the survivor of the plane?

A More or less eleven in the morning.

Q How tall was he?

A In my estimate he is a little bit taller than I am.

Q How tall are you?

A Five-eleven.

Q About how heavy was he?

A Between 180 and 185 pounds.

Q What color was his hair?

A Blondish.

Q What color was his skin?

A White.

Q Did anyone tell you that he was an American?

A When I first saw him I recognized that he was American.

Q Well, did anyone later tell you that he was an American?

A Yes.

Q Who was that?

A Seraise.

Q When you saw him at 11 o'clock where was he?

A (In English) Sitting under a tree, tied.

CAPTAIN YARD: Will the reporter read the last answer, please?

(The last answer was read by the reporter.)

Q Was that near the Kono garrison?

A Yes, it was near.

Q Were there Japanese around him?

A Yes.

Q Were they questioning him?

A I did not see him being questioned but I saw the Japanese talking among themselves.

Q Did you recognize any of the Japanese?

A Yes.

Q Name them.

A General Kono, Lieutenant Ishiguro, Hamada, Seraise, and other officers and soldiers.

Q Did you see General Kono here among that group?

A Yes, sir.

Q How far away were you from the group?

A About ten meters, sir.

Q What were your duties with the Japanese?

A We were the cargadors in the mountains.

Q How long did you stay there at that time?

A From 29 March to June 18, when we were brought to the stockade at Bacolod.

Q On the morning when you saw the aviator how long did you remain there?

A About an hour.

Q And did you see this American again?

A Yes, sir.

Q What time was it then?

A Again more or less at 4 o'clock.

Q Where was he when you next saw him?

A At the same place where I saw him in the morning, near the garrison of Kono.

Q And what were they doing then?

A From my observation the Japanese were preparing to move to another mountain.

Q Did they take this American some place else?

A Yes.

Q Did you follow them?

A Yes, I followed them.

Q And where did they take him?

A Near another mountain. When we arrived, there was already a hole.

Q How far was this other mountain where the hole was from the Kono garrison?

A Four hundred to five hundred yards.

Q And what happened when they got to the other mountain?

A Upon arriving there, Ishiguro gave the saber to Hamada and Hamada beheaded the American while the American was in the kneeling position.

Q What was done with the body?

A The body fell into the hole.and the soldiers covered the hole with earth.

Q When the American was killed did you recognize any of the Japanese that were present besides Hamada and Ishiguro?

A Yes.

Q All right, name them.

A I knew definitely General Kono. The other officers I also know by face. If I can see them now I can recognize them.

Q I show you a photograph which has been identified as Prosecution's Exhibit 6 and ask you whose picture that is.

A He was also there at the time the American was killed.

Q Do you know his name?

A No.

Q You are sure he was there?

A Yes, sir.

Q Had you ever seen this man before around the Kono Headquarters?

A Yes.

Q And you are certain General Kono here was present when the American was killed (pointing to the accused)?

A Yes.

Q How far were you from where the killing took place?

A About twenty meters from the hole.

Q Could you tell what condition the American was in, physically?

A The American was quite strong. He was not very weak.

Q Did he have any marks,bruises, on him?

A What I saw his face was bleeding.

Q What was the condition of his clothes?

A When I saw him he was wearing khaki pants and a khaki shirt. The sleeves of his shirt was torn. A part of it was already cut.

Q Do you know what was done with his clothes?

A At his death they removed the shirt. Only the pants were left on his body.

Q What did they do with his belt?

A They also removed the belt.

Q How about his shoes?

A They also removed the shoes.

Q What was done with them?

A It was given to me.

Q Was any of the rest of his clothing given to you?

A No others except the shoes,because the shoes was too large for the Japanese.

Q Who gave it to you?

A Seraise.was the one who gave it to me.

Q Do you know Juanito Diaz?

A Yes, I know him.

Q Did you see him around there when the American was killed?

A At the place where we stayed he was not there. I don't know where he was.

CAPTAIN YARD: You may cross-examine.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q I hand you Prosecution's Exhibits 3 to 14, both inclusive, and ask you to pick out any of the pictures which you can identify and name the persons whom you can identify.

A I know this one.

Q Is that the only one in Exhibits 3 to 14, both inclusive, that you do recognize?

A Yes.

Q And who is that?

A I can only recognize his face, but not his name.

LIEUTENANT MC CULLOUGH: Let the record show that he did pick out Exhibit No. 6, being a picture of Colonel Watanabe.

Q When was the first time that you saw General Kono?

A Before we went to the mountains at Bacolod City, I saw him already.

Q When was that?

A It's either February or March.

Q Of what year?

A 1945.

Q I believe you stated that you first started working for the Japanese the twenty-ninth of March and worked for them until the eighteenth of June, is that correct?

A That was the time only while we were in the mountains. That was twenty-ninth of March to June 18.

Q Had you seen General Kono prior to that?

A Yes, I saw him.

Q Where?

A In the mountain. At the time when I saw the aviator was the time when I saw him.

Q Now, was that the first time that you saw General Kono, when you saw the American aviator?

A In the mountains that was the first time I saw him, but previous to that many times I saw him already.

Q And where had you seen him previous to the time you went up in the mountains?

A At Bacolod City.

Q How far was Bacolod City from his headquarters in the mountains?

A Very far.

Q How many times had you seen General Kono in Bacolod City?

A Not only a few times but many times because I usually take a walk.

Q What was he doing at that time?

A Sometimes he rides in a car, sometimes he just walks.

Q When was the last time you saw General Kono?

A At the time when I saw the American aviator in front of the holo.

Q Did you ever see him after that time up until the date of this trial?

A Yes, I also saw him.

Q Where?

A Yes, I also saw him in the mountains when he evacuated to Bacal Bacal. It was about the month of June.

Q Did you go with the Japanese forces to Santa Rosa?

A No, I did not go.

Q Were you ever with the Japanese forces when they surrendered to the Americans?

A No.

Q Who was Seraise?

A Seraise was the civilian interpreter of General Kono.

Q Do you know whether he had previously been a business man at Bacolod?

A You mean Seraise?

Q Yes.

A I don't know. I only knew him from the month of February to March.

Q Do you know where he is now?

A No.

Q Do you know where Hamada is now?

A No.

Q When was the last time you saw Hamada?

A He was together with General Kono when they evacuated to Bacal Bacal; that was the last time I saw him.

Q When was the last time you saw Ishiguro?

A That was also the time.

Q Are you sure that Juanito Diaz was not at the foxhole when the American aviator was killed?

CAPTAIN YARD: Just a moment. If it please the Commission, the witness did not say that in his testimony. He said that where he was standing Juanito Diaz was not standing. He didn't say at the foxhole.

LIEUTENANT MC CULLOUGH: Well, it is a technicality.

CAPTAIN YARD: No, he has stated that he was some distance from the foxhole where the American was killed; but in that place where he was standing where he could observe the killing he did not see Juanito Diaz.

LIEUTENANT MC CULLOUGH: Well, I will accept your statement of the record.

Q Where were you when you received information about the airplane crash?

A We were far away from the headquarters of General Kono. We were in another mountain where all the Filipinos were gathered together, together with Seraise.

Q Could you estimate the distance from a place where you first heard of this airplane crash and the place where General Kono's Headquarters was located?

A We were only informed that there was an American airplane that crashed, and that it was a 4-engined airplane, and there was one survivor, an American; but we were not

informed as to where the exact place was.

Q Where were you yourself when you first heard of this crash?

A In our shacks, we, the civilians.

Q Was that near any barrio?

A In the mountains of San Juan.

Q Did you ever hear that there were two, and not only one, survivor of this crash?

A According to their information, only one survived.

Q Do you know how many Americans were in the plane when it crashed?

A The news we received was twelve.

Q Are you sure that there weren't two of those survived the crash, and not one?

A What I knew was one.

Q Do you know whether the bruises on his body that you have described were caused by the crash or by something else?

A I do not know because when I arrived he was left sitting there while the Japanese were talking among themselves. I did not see them maltreating him then.

Q Would it be possible that the bleeding might have been caused by the crash?

A That thing I don't know.

Q Who were you living with in the mountains?

A Seraise and other Filipinos.

Q Were those Filipinos all working for the Japanese Army?

A Yes, as cargadors.

Q What were you doing in the mountains yourself?

A The same. We carried palay in boxes; sugar.

Q How close were you ever to General Kono's Headquarters in the mountains?

A More or less one kilometer.

Q When was that?

A At the time of the incident when the airplane crashed.

Q You were within one kilometer, is that correct?

A Yes.

Q Do you know of any standing order of the Japanese prohibiting Filipinos getting closer than 300 meters to General Kono's Headquarters?

A I do not know that.

Q When you say "General Kono's Garrison," or "The Kono Garrison," do you refer to the shack or place where General Kono lived in at that time?

A What I referred to by "Garrison" or "Headquarters" of General Kono was those houses that surrounded the shack of General Kono.

Q How many were there?

A Plenty.

Q Were there about five?

A More than five.

Q Were there ten?

A More or less ten.

Q Do you know whether or not there was a cave leading from General Kono's Headquarters back into the mountain?

A Yes, he had a cave where he lived.

Q Do you know how many rooms were in General Kono's Headquarters?

A No, I do not know. The tunnel was only told to us by somebody.

Q You never, then, saw it yourself, is that correct?

A The place where he lived?

Q Yes, the place where his headquarters was.

CAPTAIN YARD: Just a moment, please. I am not sure I understand what it is now. The witness says the place where he lives. The answer was, "Yes, where his headquarters is."

COLONEL HAMBY: He is still trying to find out if he has seen the tunnel.

CAPTAIN YARD: Yes, will you ask the question again, Lieutenant McCullough?

Q There has been a headquarters described here where it is alleged that the American aviator was taken for questioning. Do you know whether or not that headquarters was connected to the mountain by a cave or tunnel?

A General Kono was living in the tunnel.

Q And did that tunnel connect with the headquarters?

A I do not know if at the end of his tunnel was his house; the way it is told to me by his interpreter, he, General Kono, was living inside the tunnel.

Q What uniform did General Kono wear in the mountains?

A White shirt, short sleeves; the pants was khaki breeches.

Q Did he wear boots?

A I cannot remember if he had any.

Q This place where you first saw the American with the Japanese soldiers in the morning, how far was that from General Kono's headquarters?

A About one hundred arms' length away.

Q Did you recognize any of the Japanese soldiers or officers in that group at that time?

A Yes.

Q Who did you recognize?

A General Kono, Ishiguro, Seraise and Hamada, and many other officers which I did not know the names.

Q At that time was General Kono wearing his sword or carrying a pistol?

A Only a wooden stick.

Q Did he have any weapons of any kind?

A No.

Q What were you doing there at that time?

A We were standing near the place where they were also standing.

Q Do you know why you are being held as a collaborator?

A Yes.

Q Why?

A Because we went to the mountains.

Q Is the only reason that you are being held as a collaborator that you went to the mountains?

A Because according to the C.I.C. investigation I went with the Japanese to the mountains and when I surrendered I was caught by the C.I.C.; by the guerrillas, and turned over to the C.I.C.

Q Were you offered any benefits or reward of any kind in your own case if you would testify in this one?

A No, none.

LIEUTENANT MC CULLOUGH: That's all the cross-examination.

CAPTAIN YARD: Nothing further, sir.

EXAMINATION BY THE COMMISSION

BY COLONEL HAMBY:

Q When the guerrillas caught you why didn't they kill you?

A Because they did not know me.

COLONEL HAMBY: Any other questions by the Commission?

BY COLONEL GOFF:

Q Did you receive any pay as cargador for the Japanese?

A No, we were only given food.

Q Did the C.I.C. ever try to identify the shirt and shoes which you received from the Japanese?

A Yes.

Q Were they able to identify the khaki?

A Only the shoes were recognized by the C.I.C.

Q And the name of the aviator was what?

A The C.I.C. identified the shoes. They are owned by the aviator who was killed by the Japanese. Somebody notified the C.I.C. in advance that the belongings of said aviator was given away to Filipinos.

Q Did you ever hand in your shoes and shirt to the C.I.C.?

A They did not get it from me.

Q Where are the shoes and shirt now?

A Only the shoes were given to me. It is now destroyed. The shirt was not given to me.

Q Why did General Kono move his headquarters from Bacolod?

A Going to the mountains?

Q Yes.

A Because the Americans were about to arrive.

COLONEL HAMBY: Any more questions?

Witness excused.

(Witness excused.)

This Commission will recess until 8:30, Thursday, 25 April 1946.

(The Commission adjourned at 1640 hours, 22 April 1946.)

Prosecution Exh. No. 27
USA vs. Takeshi Kono
28 April 1946

Prosecution Exh. No. 28
USA vs. Takeshi Kono
22 April 1946

Prosecution's Exhibit #29
U.S.A. vs Takeshi KONO
22 April 1946

(2055)

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
vs	)	PUBLIC TRIAL
	)	
TAKESHI KONO	)	
- - - - - - - - - - - - - - - -	)	

VOLUME VII

PAGES 655 TO 719

MANILA, P. I.

DATE: 25 April 1946

COPY NO.: 3

CERTIFICATION

This certifies that this volume is a part of the proceedings of the Military Commission appointed by Paragraph 21, Special Orders No. 85, Headquarters, United States Army Forces, Western Pacific, dated 12 April 1946, in the trial of the case of the United States of America v. Takeshi Kono.

Dated 7 May 1946

W. R. Hamby

WILLIAM R. HAMBY
Colonel, CAV
President of Commission

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

UNITED STATES OF AMERICA)
)
vs)
) PUBLIC TRIAL
TAKESHI KONO)
)
- - - - - - - - - - - - - - - -

Court No. 1
High Commissioner's Residence
Manila, P. I.
25 April 1946

Met, pursuant to adjournment, at 0845 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL WILLIAM R. HAMBY, CAV, President and Law Member
COLONEL JOHN L. GOFF, CAC
COLONEL JOSEPH H. WARREN, INF
LIEUTENANT COLONEL JOHN A. CHASE, (CMP) FA
CAPTAIN JACK ELLINGSON, CMP

APPEARANCES:

FOR THE PROSECUTION:

(AS PREVIOUSLY NOTED.)

FOR THE DEFENSE:

(AS PREVIOUSLY NOTED.)

INTERPRETERS FOR THE COMMISSION:

(AS PREVIOUSLY NOTED.)

REPORTERS FOR THE COMMISSION:

ARNOLD COHEN
WILLIAM COHEN

I N D E X

WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS	EXAM BY COMM.
TAKAJI WATI	657	670			674
TADATAKA KUWANO	677	703	719		

P R O C E E D I N G S

The Commission convened, pursuant to adjournment, at 0845 hours, 25 April 1946.

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: Sir, may the record show that all members of the Commission are present; that the accused together with his defense counsel and personal interpreter, and members of the prosecution, are present.

May the record show also that 2d Lieutenant William E. Murphy, Assistant Prosecuter, has been promoted to 1st Lieutenant.

Prosecution's witnesses are ready for return to Panay Island. Before their return we would like to ask the Commission if there are any of these witnesses that they desire to be held in Manila pending the continuation of this trial.

COLONEL HAMBY: Does any member of the Commission desire to have any of the prosecution's witnesses held over for further testimony?

The Commission does not desire to have any witness held over.

CAPTAIN YARD: Lieutenant McCullough, do you desire that any of the prosecution's witnesses that have testified thus far in the proceedings be held in Manila for any purpose that you may have?

LIEUTENANT MC CULLOUGH: The only two that there may be a possibility we might want to recall and whom we desire to have held are Juanito Diaz and Ricarte Magbanua, the last two witnesses who testified in the proceeding.

CAPTAIN YARD: Will it be satisfactory to the defense if these two witnesses are ordered transferred, at least temporarily, to New Bilibid Prison.

LIEUTENANT MC CULLOUGH: Yes, that is satisfactory.

CAPTAIN YARD: Thank you. The prosecution rests.

LIEUTENANT MC CULLOUGH: If the Commission please, the prosecution's resting at this time has thrown us off a little on our schedule and the time it would take today. We estimated that Dr. Caram, who was to be the next witness, possibly would take all morning on cross-and direct examination. We have three witnesses at this time ready to go forward in the case. However, it may not take the entire day. At the time when we are finished with these witnesses we would like to have a recess until tomorrow morning, at which time we will be ready to go forward again.

I call as our first witness, Lt. General Takaji Wati.

TAKAJI WATI

a witness for the defense, was duly sworn and testified as follows through Interpreters Ogita and Kato:

LIEUTENANT MC CULLOUGH: If the Commission please, the defense at this time waives its right to make an opening statement before proceeding with its defense, and we reserve the right to make a closing argument. Therefore, we will proceed with the witnesses right through to the end of the trial. This witness on the stand now will testify generally concerning the charges in this case as to the command responsibility and other phases as related to General Kono. He is not testifying in answer to any particular specification. Is that satisfactory?

COLONEL HAMBY: That is satisfactory. Proceed.

DIRECT EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Will you state your name, please.

A Takaji Wati.

Q Were you an officer in the Imperial Japanese Army?

A Yes.

Q What was your rank at the time of surrender?

A Lieutenant general.

Q Were you ever sent to the Philippine Islands by the High Command of the Japanese Army?

A Yes.

Q What particular island of the Philippines were you sent to'

A Luzon Island.

Q When did you arrive on Luzon Island?

A 1st of March 1942.

Q What was your assignment at that time?

A Chief of Staff for the 14th Army.

Q Who was the commanding general of the 14th Army?

A Lieutenant General Homma.

Q Were you also Chief of Staff of the 14th Army under General Shizuichi Tanaka?

A Lieutenant General Homma went back to Japan and Tanaka took over. I remained the Chief of Staff under him.

Q During what period of time was General Tanaka the commanding general of the 14th Army?

A From August of 1942 until June of 1943.

Q Was General Tanaka succeeded by General Kuroda as commanding general of the 14th Army?

A Yes.

Q And during what period of time was General Kuroda the commanding general of the 14th Army?

A From June of 1943 until around October of 1944.

Q Then did General Yamashita succeed General Kuroda as commanding general of the 14th Army up until the time of surrender?

A Yes.

Q Do you know Lieutenant General Takeshi Kono?

A Yes, I know him.

Q Was he one of the subordinate commanding officers under the 14th Army?

A Yes.

Q As Chief of Staff of the 14th Army are you familiar with operation orders issued by it, with particular reference to those going to General Kono's headquarters?

A I think there was one sent to him around June of 1943 and another one sent to him around April of the following year.

Q Do you know the contents of these orders?

CAPTAIN YARD: Just a moment, please. Again we say that the best evidence of the orders would be the orders themselves rather than reliance upon the memory of this witness. Therefore, we request that the defense produce the orders, if possible.

LIEUTENANT MC CULLOUGH: The objection is well taken. Therefore, it will be necessary for us to show why those orders have not been produced in writing and why it is necessary for us to testify orally concerning them as being the best evidence we can produced at this time to present to the Commission.

COLONEL HAMBY: Objection is overruled.

Q These orders that you have testified about, do you know where the written form of them is at the present time?

A These orders should be in the Staff Section of the 14th Army but at the time of surrender the documents were burned, so I don't think they are in existence now.

Q At the time of surrender did the 14th Army destroy their records, or those which they were able to destroy?

A I think that was the case.

LIEUTENANT MC CULLOUGH: Again, in answer to the prosecution's objection a moment ago, we submit that the orders were destroyed at the time or shortly before surrender, therefore making it impossible to produce them in writing, and we submit at this time oral testimony as being the best evidence which we are able to produce.

COLONEL HAMBY: Proceed.

Q Do you know the contents of the orders of June 1943 and of April 1944 which you have referred to?

A I do not remember the details of the orders but the main point of the first order was to maintain peace and order in the Visaya area, especially Panay Island. The second order stated that the Japanese Navy may use the strait near Iloilo as an anchorage. And the residents on both shores may interfere with operations so peace and order must be maintained on the coast.

Q Did those orders specifically refer to guerrillas?

A Yes. The word "enemy" pertains to guerrillas. The guerrillas were interfering with peace and order and they possessed wireless kits and creating violence. So the orders pertained to the suppression of these people.

CAPTAIN YARD: Will the reporter repeat the last part of that answer, please.

(The requested part of the answer was read by the reporter.)

Q Now, were those orders directed to the Visayan Island Group, with particular reference to the Island of Panay?

A Yes, it was the Visayan area, especially Panay Island. If the Kono command unit had great strength they may operate in other areas but since Panay Island was the worst, that was especially referred to.

Q Was General Kono's brigade an element of the 14th Army and under its command?

A Yes.

Q Do you know what the strategic background of these orders was?

LIEUTENANT MC CULLOUGH: I suggest to the interpreter, where these answers are long, that he take it in sections so that we will be sure to get all of the testimony.

A . The 14th Army received from the Imperial General Headquarters the defense of the Philippine Islands. That was the mission they received. In defending the Philippine Islands there were weak points. To the north there was Luzon Island and to the south there was Mindanao Island. However, right in the middle there were five islands: Panay, Cebu, Bohol, Leyte, and Negros.

Now, in the future, when the Americans would attack, they would assault the middle positions. Of these five islands, Panay Island was the weak point in the defense.

When Corregidor fell all of the American and Filipino forces surrendered. However, on Panay Island they did not all surrender and many escaped to the mountains. In the mountains of Panay there was much food, especially rice, and the guerrillas were able to subsist on this food.

Also, on the west coast, at a place called San Jose, the ocean was very deep and submarines were able to come in submerged and land arms.

At that time the guerrillas on Panay Island had many wireless kits. On Panay Island there were over twenty wireless radio stations, and also to the north of Mindanao there were about five of these stations. These radio stations would gather information and transmit them to Australia. The Japanese Army had three radio intercepting stations, one in Manila, one in Legaspi, and one in Cebu; and according to these stations we discovered that there were many radio stations on Panay. In other words, in the Visaya Group Panay Island had the most guerrillas and they were the ones who were communicating most frequently with the American forces. In order to maintain peace and

order the situation was such that we had to start clearing up the guerrillas from Panay Island.

The Kono army group had the mission to maintain peace and order on Panay. However, looking at the war history around 1900, the United States Army carried out punitive expeditions on Panay, and according to the figures, the Americans took five or six years and --

CAPTAIN YARD: Just a moment, please. At this point the remarks -- well, I'll withhold my objection until the answer is finished.

A (Continuing) In carrying out these punitive expeditions, many civilians were killed. So we knew that the Kono unit would have much difficulty in maintaining peace and order on Panay.

CAPTAIN YARD: We move that all parts of this answer relative to the United States Army, what it did with respect to conducting the punitive expeditions, be completely stricken from this record as being not responsive, as being inflammatory, and having no bearing at all in these proceedings, and as being highly improper in the record.

LIEUTENANT MC CULLOUGH: Before ruling, if the Commission please, we submit that it is highly material to the case involved because, in order to understand fully the facts in this case, it is necessary to understand the strategic background and history of these orders.

There were certain reasons why these orders were issued by the Japanese High Command; that these orders were, in fact, issued based upon certain strategic reasons.

Therefore, we feel that it is necessary that the Commission, not only to understand this particular case but also to lay

before them fully the facts of this case, briefly review the background of these orders, which the witness has done in his answer to my question. Also, the answer has certain probative value which throws it within the discretion of this Commission to inquire into under the rules laid down by General MacArthur.

Therefore, we submit that the objection should be overruled and the answer allowed to stand in the record.

COLONEL HAMBY: Will the reporter read that answer back in which he referred to the United States Army's activities.

(The last answer was read by the reporter.)

COLONEL HAMBY: The Commission will retire to take the objection under advisement.

(The Commission retired for executive session.)

COLONEL HAMBY: The objection is overruled.

Q Would you state what the basic policy of the Japanese Army High Command was with reference to the treatment of the civilian population?

A Stating it simply, it was to make the civilians sympathetic to the Japanese; in other words, make them the allies of Japan. As Tojo said, the residents of the Philippine Islands, Malaya, and Java and other islands -- these residents were supervised by Europeans and they had lost their freedom. So give them freedom and have them collaborate with each other in building up the East Asia Co-Prosperity Sphere. That was the general policy.

CAPTAIN YARD: Will you read the question, please.

(The last question was read by the reporter.)

CAPTAIN YARD: I have no objection.

A (Continuing) In other words, we wanted the Philippines for the Filipinos, not for Japan or for America, and Java for the Javanese. With this in mind, the Japanese Army had to administer so that they would receive the cooperation of the residents. If the residents do not cooperate hand in hand, the situation becomes very difficult. Give them independence: that was the policy.

CAPTAIN YARD: Again, the Government objects to the answer for reasons given in our former objection. The answer is not relevant but it is simply affording this witness an opportunity to set out the Japanese ideology. It is more or less in the nature of a propaganda address by this witness. It has no place in this record and we ask that the answer be stricken and we object to

a continuation of this line of questioning.

LIEUTENANT MC CULLOUGH: If the Commission please, before ruling on that, we feel that it is highly important to establish the basic policy of the Japanese Army High Command, as it had command functions over the 14th Army, and particularly over General Kono; that this evidence has certain probative value; that it also establishes a policy underlying the orders which were subsequently issued. It shows the state of mind also of the Japanese High Command at the time the alleged atrocities took place. We feel, too, that General Kono in this particular trial is being tried for command responsibility. There has not been a single witness who has ever tied him directly into the killing or the beating of a single person. It is purely a case of command responsibility. He received his orders from higher headquarters. We feel that in justification of the defense in this case it is necessary to show the basic policy of his higher headquarters. This witness has testified here what that policy was and who one of the persons was, at least who laid out that policy, and that was Tojo. Therefore, we feel that the objection should be overruled.

CAPTAIN YARD: Sir, may I make an additional statement. With specific reference to the last answer of the witness: what Tojo may have felt, what the Imperial High Command may have said as to the Philippines for the Filipinos and Java for the Javanese, and so forth and so on, is not relevant unless it be shown that in some order that was sent to the accused he knew this to be

the policy; that it was given to him specifically as the policy; and that he was to conduct himself accordingly. Now, according to the witness there were two orders sent down to the accused. They were to suppress the guerrillas. There has been no testimony by this witness that in this operation order of June 1943 and April 1944, any of this benevolent policy of the Japanese Government was set forth in that operation order. For that further reason we object and ask that the answer be stricken.

COLONEL HAMBY: The objection is overruled. Proceed.

LIEUTENANT MC CULLOUGH (To interpreter): Will you ask the witness if he finished his statement?

(The interpreter translated to the witness.)

A Yes.

Q Did the commander-in-chief of the 14th Army issue directives relative to the treatment of the civilian population?

A Yes.

Q Do you recall the circumstances leading to General Kono's appointment to the command of the Visaya Brigade Area?

A Yes, I know.

Q Will you state what those circumstances were?

A In the Visaya Area, General Kono was the man who was the commander there. After the fall of Corregidor Major General Nagano was the commander. However, at that time warfare was still going on, even in Cebu. Next, a man named Inouye took over. However, this man was in very

poor physical condition and he could not carry out his mission. He has carried out punitive expeditions but they were failures. One time when General Tanaka was in an automobile travelling on a road outside of Iloilo, some people shot at him. We don't know whether they were residents or guerrillas. However, one Military Policeman in the same automobile died. So General Kuroda wanted a change in the commanding officer. He sent a letter to the Minister of War with the following conditions: the commanding officer in the Visaya Area must be in good physical condition and have a strong sense of responsibility. He must have the complete control of military discipline over his men. He must be a man who not only preaches but also practices what he preaches. He must be a man who has confidence in training and education, especially a man who would treat the civilians kindly. There were other conditions in the letter. In view of this, the War Department selected and specially appointed General Kono to the position and dispatched him.

Q Are you sure that it was General Kuroda, or was it General Tanaka, that made the request for change in the commanding officer at that time?

A Tanaka. At the time Lieutenant General Tanaka was ill so I took charge of this.

Q Did the 14th Army Headquarters receive any information about the atrocities alleged in this particular case we are now trying?

A From who? Reports on such matters would come either from the unit commander, Kono, or from the Philippine Island Administration headed by Vargas. However, we did not hear anything from Kono nor from Vargas.

Q Do you know Captain Kengo Watanabe?

A I know of an officer named Watanabe, but I do not know of any with the first name Kengo.

Q Do you know a Lieutenant Colonel Hidemi Watanabe?

A Yes.

Q What is your recollection of that officer?

CAPTAIN YARD: Just a moment, please. The question is entirely too broad. We will object to the question in the way it is phrased and ask that it be confined to some particularity.

LIEUTENANT MC CULLOUGH: The objection is well taken. We will rephrase the question.

Q Where did you first meet Lieutenant Colonel Watanabe?

A When he was assigned to the Kono Unit as a staff officer and was on his way down there, he stopped in Manila and reported to me.

Q Do you know about his character?

A Watanabe was in the personnel department of the war ministry which handled the military personnel. He had a very good character and he was a kind man. He was also an ardent follower of Buddhism.

Q Do you know Lieutenant General Suzuki?

A There are many Suzukis.

Q Do you know the Lieutenant General Suzuki who was commanding general of the 35th Army Corps?

A No.

Q Now, do you know whether or not he was superior in command to General Kono between mid-December 1944 and the end of March, 1945?

A He was above him.

Q Do you know Lieutenant General Fukeui?

A Yes, I know him.

Q Was he the commanding general of 102nd Division under the 35th Army Corps between July 10, 1944, up to the date of the surrender?

A Yes.

Q Was he superior in command at that time to General Kono, who had control or was commanding officer of the 77th Independent Brigade?

A. Yes.

Q Now, who issued basic policies or orders to the 35th Army Corps?

A The commanding officer of the 14th Army.

Q Who laid down the basic policies or issued orders to the 14th Army?

A Imperial General Headquarters -- just a minute. At that time it was the Imperial General Headquarters.

Q Were there any other intermediate commands between the Imperial General Headquarters and the 14th Army?

A There were some periods when there was a headquarters and other periods when there was no headquarters.

Q At that time did the Southern Command -- withdraw that question.

At what time did the Supreme Southern Command have command responsibility over the 14th Army?

A The 14th Army was not under the command of the Supreme Southern Command from around July of 1942 until May of 1944. At other times the 14th Army was under the Supreme Southern Command.

Q Did you know Count Marshal Terauchi?

A Yes.

Q Who was he?

A He was the commanding officer of the Supreme Southern Command.

Q Did you serve with the Supreme Southern Command?

A Yes.

Q What was your official capacity?

A Assistant Chief of Staff.

LIEUTENANT MC CULLOUGH: You may cross-examine.

CROSS-EXAMINATION

BY CAPTAIN YARD:

Q Have you been charged as a war criminal?

A I am a war criminal suspect.

Q You are presently held in the stockade at the High Commissioner's Residence in Manila, is that right?

A Yes.

Q Did Kono meet the requirements of a good disciplinarian as far as his troops were concerned?

A I did not actually see at the spot, but as far as I know, and according to what I heard in Manila, Kono did do his job well, as far as that is concerned. General Kuroda, the commander-in-chief of the 14th Army, has actually gone to the scene and has seen Kono.

Q And do you know whether General Kuroda was satisfied with the control which Kono was exercising over his troops?

A According to Kuroda's statement after he came back, he was satisfied.

Q Do you know when General Kuroda made his trip to Panay Island?

A I think it was around August of 1943.

Q And you had reports on General Kono thereafter?

CAPTAIN YARD: I'll rephrase the question. After August 1943 did the 14th Army Headquarters have reports on General Kono?

A Yes.

Q And how frequently would it receive the reports?

A We had meetings of Army Group Commanders such as divisional commanders. Such a meeting was held toward the end of the same year, and each army group commander must make reports on their progress.

Q And at that meeting at the end of 1943, was the report on Kono still favorable as to the control which he exercised over his troops?

CAPTAIN YARD: Will you read that question back?

(The last question was read by the reporter.)

A It was satisfactory.

Q In 1944 did you have such a meeting.

A I do not remember exactly, clearly. I do not remember clearly because I was with the 14th Army until April of 1944, and in the meantime I have travelled and there may have been a meeting in my absence but I do not know.

Q Do you know whether during 1944 reports on Kono reached 14th Army Headquarters?

A I do not remember.

Q Do you know whether or not during 1944 the control which Kono exercised over his command was satisfactory or unsatisfactory?

A There was a report saying that it was satisfactory.

Q You issued an order to Kono in 1943 to maintain peace and order, is that right?

A Yes.

Q You issued an order to the same effect in 1944, is that right?

A Yes.

Q Those reports directed that the guerrillas should be suppressed, is that correct?

A Yes.

Q Did these reports describe the methods to be used in suppressing the guerrillas and maintaining peace and order?

A The method was not in the order.

Q That would be left entirely within the discretion of General Kono, is that right?

A Yes.

Q Did you ever order General Kono to kill unarmed men, women, and children in Panay Island?

A Definitely not.

Q Did you ever order General Kono to torture, brutally mistreat unarmed men, women, and children in Panay Island?

A No.

Q So that if members of the Kono command tortured, mistreated, or killed unarmed men, women, and children, it was as a consequence of his own orders rather than those of

14th Army Headquarters, is that right?

LIEUTENANT MC CULLOUGH: To which I object, for the question is highly improper and is attempting to elicit from this witness the decision in this case, which decision is solely within the province of the Commission to decide as to the guilt or innocence of General Kono at the time the verdict is handed down. It is not a proper question to ask this witness.

CAPTAIN YARD: Sir, there has been evidence in the case that men, women, and children were tortured and killed by Kono troops. This witness, who was the chief of staff of the 14th Army Headquarters, has said that no orders that these people should be killed or mistreated came from 14th Army Headquarters to Kono. Our question simply is that if these people were killed or mistreated, it had to start with the Kono headquarters rather than with 14th Army headquarters. I am not asking him to make a decision. I am just asking him if 14th Army had anything to do with such things, if in fact they did have.

LIEUTENANT MC CULLOUGH: If the Commission please, before ruling we again submit as an additional reason the fact that these alleged atrocities may have taken place on a subordinate level, even to that of General Kono, therefore passing it on down another degree or another step, and we again submit it is an improper question and should be overruled and stricken from the record.

COLONEL HAMBY: The Commission rules that the question is improper and will be withdrawn. However, you may rephrase the question along the same line in an attempt to

develop further information from the witness.

CAPTAIN YARD: No further questions.

LIEUTENANT MC CULLOUGH: Nothing further, sir, on redirect.

COLONEL HAMBY: Questions by the Commission?

EXAMINATION BY THE COMMISSION

BY COLONEL CHASE:

Q I would like to ask one question: What was the specific staff assignment of Lieutenant Colonel Hideni Watanabe under General Kono?

A Watanabe was the only staff officer with Kono and his mission was to aid Kono.

BY COLONEL HAMBY:

Q At the time General Kono was sent to Panay he was a major general. He was later promoted to a lieutenant general. What basis did the 14th Army Headquarters in which this witness was chief of staff use to promote General Kono? In other words, why did they promote him?

A That is an act by the War Ministry. However, the 14th Army has reported that General Kono was seriously and industriously carrying on his work. Such matters are considered when such decisions are made.

Q In other words, was not his recommendation to the War Ministry for promotion made by the 14th Army Headquarters?

A Yes.

Q This witness has stated that there was a certain policy by the 14th Army of treating civilians kindly in order to gain their cooperation. What would happen to a general officer in the Imperial Japanese Army who disobeyed those orders?

A He is punished.

Q What method of punishment would be generally used?

A It would depend upon the degree of violation. Light punishment may include restriction on the job. However, heavier penalties would be to be brought up for court-martial. However, depending upon circumstances, if the court-martial would be too cruel for the man, he may be transferred to another position or he may be transferred from the active service back into a reserve.

Q Did General Kono have the power or the authority of life and death over the officers and enlisted men of his command?

INTERPRETER OGITA: Do you mean "execution"?

COLONEL HAMBY: Yes.

A No, he has no power.

Q Did he have the authority to appoint a general court-martial which did have the power?

A He had the power to bring a man up for court-martial.

Q Then did he have the authority to approve the court-martial proceedings?

INTERPRETER OGITA: When you say "proceedings," do you mean decision, sir?

COLONEL HAMBY: Decision.

A The decision of the court-martial upon such subordinate commanders would be reviewed by the commander-in-chief of the 14th Army, in other words, General Kuroda.

COLONEL HAMBY: Any further questions?

CAPTAIN ELLINGSON: What instructions did the 14th Army issue to subordinate commanders concerning disposition

of captured guerrillas?

A They were to be brought up for military tribunal and then disposition would be made.

COLONEL HAMBY: Any further questions? There appear to be none. The witness is excused.

(Witness excused.)

LIEUTENANT MC CULLOUGH: Sirs, we ask that this witness be excused permanently for the duration of this trial for the reason that he was flown in here from Tokio to testify in this proceeding. We received another radio from Tokio requesting that he be returned as a witness in one of their war crime trials there, so that he may be in Tokio prior to May 1.

CAPTAIN YARD: We have no objections, sir.

COLONEL HAMBY: There is no objection on the part of the Commission to having this witness returned on April 27th.

LIEUTENANT MC CULLOUGH: And now may we have a short recess in order to call our next witness?

COLONEL HAMBY: The Commission will take a short recess.

(Short recess.)

COLONEL HAMBY: The Commission is now in session.

LIEUTENANT MC CULLOUGH: Sir, the defense calls as its next witness, Sergeant Major Tadataka Kuwano.

TADATAKA KUWANO

a witness for the defense, was duly sworn and testified as follows through Interpreters Kato and Ogita.

DIRECT EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Will you state your name, please.

A Tadataka Kuwano.

Q How old are you?

A Thirty.

Q During 1943 and 1944 were you a member of the Japanese Armed Forces?

A Yes.

Q What was your rank during October to December of 1943?

A I was a Sergeant Major.

Q What unit were you attached to?

A Headquarters, 177th Independent Battalion.

Q During that time were you also attached to the 37th Infantry Battalion?

A Yes.

Q Was this also known as the Tozuka Unit?

A Yes.

Q Where was the Battalion Headquarters?

A In the city of Iloilo.

Q Who was your battalion commander?

A Lieutenant Colonel Ryoichi Tozuka.

Q Who was your immediate commander during the guerrilla activities?

A Do you mean the time of the punitive expeditions?

Q Yes.

A Captain Kengo Watanabe.

Q Do you know Lieutenant Colonel Hideni Watanabe?

A Yes.

Q Did he ever issue any orders to you?

A No.

Q Was Captain Kengo Watanabe with you on the punitive expedition?

A Yes.

Q Was Lieutenant Colonel Hidemi Watanabe with you on the expedition?

A He did not go.

Q Did you ever see General Kono on any of the expeditions?

A No.

Q Would you say there was a physical resemblance between Colonel Watanabe and Captain Watanabe?

CAPTAIN YARD: Just a moment, please. I object to the question. I suggest, if you want to pursue the question, that you have the witness describe each of the men and leave the conclusion as to the similiarity to the Commission. This witness' testimony would not be, you might say, the best evidence of the description of these two men.

LIEUTENANT MC CULLOUGH: All right. The objection is well taken.

Q How tall was Captain Kengo Watanabe?

A About five feet three inches.

Q How tall was Colonel Watanabe?

A I do not know exactly but it seemed that he was a little shorter.

Q How much shorter?

A I cannot say how much but it seems he was not quite five feet three inches.

Q Would you say there was less than two inches' difference in their height?

A I believe it was about one and one-half inches' difference .

Q How much did Captain Watanabe weigh?

A I do not know exactly but it seemed that he was about 60 kilograms.

Q What was the weight of Colonel Watanabe.

A He was a little stout so I cannot estimate.

Q Did he weigh more than seventy kilograms?

A I don't believe he was that much.

Q Would you say that it was between sixty and seventy kilograms?

A He was stout but his height was short so I believe he may have been around 62 or 63 kilograms.

Q What was the color of Captain Watanabe's hair?

A Black.

Q Did he wear it short or long?

A He had it cut short.

Q What was the color of Colonel Watanabe's hair?

A It was also black.

Q Did he wear it short or long?

A It was short and it was a little bald.

Q Did Captain Watanabe wear a mustache during the expedition?

A Sometimes he wore a mustache but at the time of the expedition it was just growing and was not one that he had raised.

CAPTAIN YARD: Will the reporter read the last answer, please.

(The last answer was read by the reporter.)

Q You mean that he did not shave during the expedition?

A Yes. On the expedition there was no time for shaving.

Q Did Colonel Watanabe wear a mustache?

A Yes.

Q Was that all during 1943 and '44?

A Yes, he always wore it.

Q What was Captain Watanabe's complexion?

A He had no special complexion except that it was Japanese.

Q Is that also true of Colonel Watanabe?

A For a Japanese, his face was white and his face was oval.

Q Was Captain Kengo Watanabe's face round or oval?

A It was long.

Q Did Captain Watanabe carry a sword?

A During the expedition he did not carry a sword, but once he took out his sword on an expedition.

Q Did Colonel Watanabe carry a sword?

A When I saw Watanabe it was in Iloilo. He had a sword.

Q Is the expedition that you have referred to the one which left Iloilo City on or about the 17th of October 1943?

A I am not speaking of any particular expedition.

Q Did you go on an expedition out of Iloilo City on October 17, 1943?

A Yes.

Q What was your assignment in that operation while on that expedition?

A I was a platoon leader in the headquarters.

Q How many men were under you?

A Twenty Japanese soldiers and fifteen Filipino volunteers, a total of thirty-five.

Q What orders did you receive before leaving on this expedition?

A Before leaving on the expedition I did not receive any orders in Iloilo City, but for security reasons I received my orders on the boat.

Q What were those orders?

A The orders included the direction which our unit was to advance and it included Batan, Balete, Altavas, Banga, and Libacac and further in the mountains, Aklan. There were many enemies along this line and we were particularly instructed to capture wireless facilities and guerrilla chiefs. And supplementing this order there were instructions which said that there were many enemies on Batan, and therefore be prepared to land against fire.

Q Did the orders that you received direct you to capture specific guerrilla leaders?

LIEUTENANT MC CULLOUGH: I will rephrase that question. It might help the interpreters.

Q Do you know the names of the guerrilla leaders that you were to capture?

A Yes.

Q Who were they?

A They were Lieutenant Colonel Peralta, Chavez, Grasparil, and Velunia, Confesor, and Fernando. I knew some more but at the present I have forgotten.

LIEUTENANT MC CULLOUGH: I believe also there might be a correction in the interpretation there. The name "Fernando" should be "Fernandez."

COLONEL HAMBY: Make the correction.

Q What guerrilla regiment was operating in that region?

A I cannot remember clearly but it may have been the 64th Regiment, either the 64th or the 65th Regiment.

Q Could it have been the 66th?

A It either was the 64th or the 65th.

Q Do you know where their headquarters was at that time?

A I heard through orders that the headquarters is in Batan, Balete, Banga, and Libacao.

Q Do you know the names of any radio stations or the call letters of any radio stations that you set out to capture?

A Yes, I knew some. The one connecting with Australia was lettered NCL and there were others I remember, which included HV5, CAI, PRE, PI something, and others which I have forgotten at the present time.

Q Do you recall a PAX?

A Yes.

Q Was it also included?

A Yes.

Q When did the expedition that you are referring to leave Iloilo City?

A I remember it as being 17th of October.

Q Did that expedition take a land route or a sea route?

A We took a water route on two boats.

Q Where did you land?

A Around 1300 on the 17th we left Iloilo City and during that time we spent on the ship, and on the morning of the 18th we landed at Culasi and cooked our rations. At 1300 we again boarded the boat and at 1730 we reached Batan. At 1730 we went up to about 600 meters up the Batan River and we could not go any more because it was too shallow.

Q What happened at the landing at Batan?

A At 1730 when we went into the Batan River we could see smoke rising in the City of Batan. That was a guerrilla signal to warn the approach of Japanese. We looked through binoculars from the ship and on a small mountain about two hundred meters in height we saw about twenty men with rifles and thirty other men of unknown description running. We thought that we would encounter stiff resistance so we prepared for landing under fire and loaded our guns.

LIEUTENANT MC CULLOUGH: Sir, it is approximately twenty minutes to twelve. The witness will continue for some time. Do you desire to take a recess for lunch now?

COLONEL HAMBY: The Commission will recess until 1330.

(The Commission recessed at 1140 hours.)

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: Sir, may the record show that all members of the Commission are present; that the accused together with his counsel and personal interpreter, and members of the prosecution are present.

(To interpreter) Will you remind the witness that he is still under oath.

(The interpreter translated to the witness.)

LIEUTENANT MC CULLOUGH: May I have the last question and answer read back, please.

(The last question and answer was read by the reporter.)

DIRECT EXAMINATION (Cont'd)

BY LIEUTENANT MC CULLOUGH:

Q Did you capture anyone at that time?

A 3rd Company, 4th Company, and Kuwano Platoon, in that order, jumped into the water up to our chest. When the Kuwano Platoon landed ashore, the 3rd Company and 4th Company had already started pursuing the guerrillas and we could not see them.

Q Now, right at that time, then, or shortly after that, did you capture any of those guerrillas?

A No, we did not. We received orders from Captain Kengo Watanabe to go the east of Batan, a distance of about two kilometers, and capture guerrillas.

Q Who was the commanding officer of that expedition at Batan -- withdraw that question.

Who was your commanding officer at Batan?

A The one who was in immediate command was Captain Watanabe.

Q Was that Captain Kengo Watanabe?

A Yes.

Q What happened next?

A After receiving the order to capture guerrillas we went out and we returned around 2100. However, we were not able to catch anyone. At that time I reported to Captain Watanabe and at the same time I saw about twenty people were captured, but I do not know who captured them.

Q. Were there any inhabitants in Batan at that time?

A No, there was not a single resident.

Q From Batan where did you go?

A That night we stayed in Batan. Early next morning, about five o'clock, we started advancing toward Altavas.

Q What was that date?

A It is the morning of the 19th.

Q 1943?

A Yes.

Q Then what happened.

A That morning we left around five o'clock from Batan and around seven o'clock, immediately after sunrise, we passed the town of Altavas.

Q Did you stop at Altavas?

A No, we did not stop.

Q What followed after that?

A We passed Altavas around seven o'clock and then we went about three kilometers on. We stopped and the company went out to capture guerrillas in the mountains to the left.

LIEUTENANT MC CULLOUGH: For the Commission's information, and also the prosecution's, the witness' testimony

up to this point has included Specifications 29 and 30; that from this point on it will be as to Specifications 31, 34, and 36.

Q Where was Lieutenant Colonel Tozuka at that time?

A He was advancing together with the unit.

Q Where was his headquarters --

CAPTAIN YARD: I'm sorry, I didn't get that last answer.

(The last answer was read by the reporter.)

Q Where was his headquarters established?

A The headquarters was not established yet at that time because we were still moving.

Q Did he later establish his headquarters at Talon?

A Yes.

Q After you pitched camp at Altavas what followed that?

A We did not stop at Altavas. We stopped at a place about three kilometers away from Altavas. The company went to the mountains towards the left to capture guerrillas. My platoon left early with Captain Kengo Watanabe's outfit and left the place. The headquarters of Tozuka was still back there.

Q Did you catch any guerrillas?

A I did not go to capture guerrillas at that time. We left ahead and we went about four kilometers and stopped.

Q Did you that same day go to Balete?

A No. That day we rested on the road.

Q Where did you go then the next day?

A The next morning, about four o'lock, early, we left the road and we went to Balete and assaulted the house of

a first lieutenant in the guerrilla which was located on the banks of a river.

Q Now, was Lieutenant Fujii with you?

A No, he was not with us.

Q What happened then when you went to this first lieutenant guerrilla's house?

A It was right after dawn, about 6:30 in the morning. The river was quite deep at some spots and we lifted our life belts over our heads and swam across. We raided the house but the first lieutenant had already escaped. However, in the house the ashes of the fire which was used to prepare food was still warm. It seems as if he had escaped the night before or somewhere around there.

About fifteen hundred meters away, ten persons carrying rifles and long swords were sighted running toward the mountains across the rice paddies. Captain Kengo Watanabe immediately issued orders to capture these men. We left our packs, just carrying our rifles, and pursued them. Since we sighted these men with our binoculars, we decided to reconnoiter the mountain.

About 12:30 we captured five men carrying long swords--they were about thirty years old--and brought them back to headquarters in Balete. After we brought these five prisoners back we handed them over to the headquarters of Captain Kengo Watanabe.

About 1330 in the afternoon we received orders again to go to the mountains on the opposite side from where we operated in the morning to capture guerrillas. We came back in the evening but we were not able to catch

anyone. That was all that day.

Q Did you meet any inhabitants that day along the road?

A No.

Q Were there any inhabitants in the barrio of Balete at that time?

A None at all.

Q Where was Captain Watanabe's headquarters at that time?

A At the first lieutenant's house in Balete.

Q Where was Colonel Tozuka's headquarters at that time?

A In Talon.

Q What orders did you receive at Balete?

A On the following day, the 21st, at seven o'clock in the morning I was called by Captain Watanabe to receive orders. This was the order: Kuwano platoon will leave one squad for the purpose of security for the Watanabe headquarters. The remaining two squads--you will take the remaining two squads on the main road for about fifteen kilometers and go to Banga. At Banga, attack the intelligence headquarters of the enemy and gather intelligence. Leave immediately.

Q Were you given any particular precautions?

A Not especially precautions, but we had instructions supplementing this order. His instructions stated that Banga was the headquarters for the enemy intelligence. There are many enemy guerrillas there so, since such a small unit is going there, take all security measures.

Q What did you do then?

A I followed orders and left Balete at seven o'clock with

two squads. This main road ran between two mountains and we advanced along this road by carrying out security.

Q What did you see when you arrived at Banga?

A The road was good but at three places the bridges were destroyed and we had to cross the river. There was only about fifteen or sixteen kilometers to Banga but it was past 12 o'clock when we arrived there.

About one kilometer before we reached Banga we began to hear the noises or the sounds of bamboo sticks being struck against each other. Those guerrillas were sending signals from mountain to mountain. Since we could not see ahead and we expected quite some resistance, we took every precaution and approached the entrance to the town of Banga.

Q Upon arriving at the barrio of Banga what did you see?

A Banga is a very small town. The approach to the town was at an intersection shaped like a "T." When we reached a place about 150 meters before hitting the intersection we sighted about one hundred men standing at the intersection. They were a little over a hundred meters away but we saw that they were very well clothed and that they were all men.

I thought it was extremely strange that in the other towns we wouldn't see a single inhabitant where in this town we see so many people, and at that they were all men. So I told my subordinates in a low voice that something is funny around here, to take all precautions.

Previously in April or May of 1943 at Alimodian, Iloilo, for propeganda reasons we were being feted with a welcoming party; at this time we were attacked by men carrying rifles,and a medical sergeant and the superior private were killed. Thinking of this incident we approached this intersection.

The men in the group were about twenty-five years old to forty years old. Most of them were well-dressed and wearing shoes and some of them had mustaches. They were waving their arms and yelling, "Banzai, Japan!" Our unit only had twenty-four or twenty-five men and it was extremely small. Since there was a danger of our small unit being attacked suddenly by this great number of men, we gathered these men at the intersection and had them sit down so that they would not spring upon us suddenly.

The group of men was very noisy but after two or three minutes they quieted down and sat down. Aside from these men there wasn't a trace of anyone in the town.

It was about 1300 in the afternoon but the town was very quiet. Since the intersection was a blind corner I wanted to place a sentry at each corner, one to the right, and one to the left and one to the rear; however, when I was about to order it the men had already placed themselves at the positions.

I stood up in front of the group with an interpreter named Hamai, who was attached to our unit. I told the group, "This town has an intelligence headquarters. You men should know where it is located. We carry rifles and

light machine-guns but don't be worried because we will not use them against good residents." I told the mayor, the chief of police, and the influential officials of the town to step out. Twelve or thirteen men stepped out saying, "I am the mayor"; "I am the chief of police"; and "I am the official."

I took them away from the group and placed them at a spot about ten meters away from myself. I was about five or seven meters away from the big group. I further asked the group, "Anyone knowing the whereabouts of the intelligence headquarters -- where the intelligence headquarters escaped to -- and anyone who is carrying arms or anyone hiding arms will raise their hand and step out."

The men of the group just noisily talked among themselves and did not respond to my order. I kept asking these man that anyone who is carrying or hiding arms or anyone who knows the whereabouts of the guerrillas should step out. I kept pleading with them for about five minutes. I repeated to them that the Japanese Army will not hurt any good citizens. Persons carrying arms can step out right now and hand them in and nothing will be done to them.

Two men to the left rear of the group stepped out and came forward. They were wearing shirts, short trousers, and I believe they had rubber shoes on. They were about twenty-four or twenty-five years old. They said that they had pistols somewhere and that they also knew the whereabouts of the guerrillas. I had these two

men sit next to the group, including the mayor, and had a Japanese soldier guard them.

I further asked the large group where the intelligence headquarters escaped. Three men from the rear of the group stood up and came forward. I kept asking the question to the group but they would just talk among themselves, so finally I took these three men aside. I started questioning the two men who first came out. They told me that they had a revolver under the roof of their house and the rifle was in a banana grove next to the well in the back. I asked them about the intelligence headquarters. One of them told me that until last night the intelligence headquarters was in town; in fact, it was in a two-story building only 30 meters from the road on which you approached. He said that the guerrillas escaped during the night. I asked him how he knew such a thing and he told me that when the guerrillas were escaping they told him. So I knew immediately that this person who was telling me this was a guerrilla and that he was a member of the intelligence headquarters.

I asked him where the guerrillas escaped. The first man told me that the guerrillas escaped to the mountains about twelve kilometers away, so I asked the other one. He also told me the guerrillas were stationed in this two-story house and he told me that they escaped in the morning about three or four o'clock. However, when I asked him where they escaped he pointed the opposite way and their stories would not mateh, so I could not rely too much upon their words.

In the meantime the men in the large group were talking among themselves, pointing at me, pointing at the other men. I turned to the three men. If I talked to them at that spot the men in the large group could hear, so I took them to a spot about twenty meters away. I started my investigation at that place. They said they had revolver and rifle. I said to them, "You are very honest. I will not punish you for telling me this. Bring your revolver and rifle later." I told these men that there must be an officer or a noncom of the guerrilla force in the large group of men. I told them that they had better not point him out to me in the presence of the men because the guerrillas may take revenge upon the informer, so I asked these men to just tell me the location in the group where the guerrilla officer or non-commissioned officer was located.

One of the men told me that in the rear of the group there is a man wearing a purple shirt. I looked and there was a man wearing a purple shirt. He was about thirty years old and I was told he was a first lieutenant in the intelligence headquarters. As I took the three men away from the group the men in the group were talking among themselves, pointing at us. As we were walking by the group I looked at the man wearing the purple shirt with the sight glass and the three men told me that he was the one.

Just at that time six or seven men in the rear of the group, including the man wearing the purple shirt, stood up and started running toward the marketplace.

The key intersection was a spot where the group was located. Directly behind that place was the marketplace and that is the place where the men started running for. I immediately thought that these men were running for arms which they had hidden some place or they were going to get some men that were hiding there. The soldiers in the vicinity yelled at the top of their voice and signaled them to stop. However, these seven or eight men who were running did not stop and they kept on going, so the soldiers opened fire.

At that moment the large group of men stood up and some of them went to the side and some of them came toward me to the front with their arms spread apart. Upon seeing this, my subordinate who was standing by with a light machine-gun opened fire. It was a distance of seven or eight meters between myself and the large group of men. When the soldier opened fire upon the men who were escaping to the rear, the large group of men stood up and started coming forward, surging forward. So my subordinate who had the light machine-gun naturally thought that they were coming after us so he opened fire. I believe this was around 1400.

COLONEL HAMBY: At this time the Commission will take a short recess.

(Short recess.)

COLONEL HAMBY: The Commission is now in session.

LIEUTENANT MC CULLOUGH: Will the interpreter remind the witness that he is still under oath.

(The interpreter translated to the witness.)

DIRECT EXAMINATION (Cont'd)

BY LIEUTENANT MC CULLOUGH:

Q After this group was machine-gunned how many people were killed?

A I did not count so I do not know exactly but around twenty men escaped so probably about eighty were killed.

Q Were you the platoon leader at that time?

A Yes.

Q How do you justify this action of the platoon under these circumstances?

A That was an inevitable situation. Nothing could be done. I considered the action taken by my men to be an appropriate combat operation. The responsibility for any action by my men rests with me as their platoon leader. At that moment in that situation my men had no other way, no other means, to counteract the situation. In that situation any platoon leader or any soldier would take a similar measure. In such a situation such action can by considered a combat operation, and naturally I will take all the responsibility. However, any platoon leader or soldier of any Army will consider that the action taken by myself and my men as a proper combat operation, and I believe that can be justified even by the Rules of Land Warfare.

Q Now, do you know a Filipino by the name of Digohermano?

A No.

Q Do you recall a Filipino boy about sixteen years of age who was employed as a cargador with this expedition?

INTERPRETER OGITA: Cargador?

LIEUTENANT MC CULLOUGH: Cargador or a pack-carrier.

A There was a boy about sixteen years of age who was an informer but I don't know his name.

LIEUTENANT MC CULLOUGH (To interpreter): I wonder if you would ask that question of the witness again and get his answer back again.

(The interpreter translated to the witness.)

A I don't think there was such a boy on this expedition. However, in Iloilo there was a boy about sixteen years of ago who was working for -- an informer named Jesus.

Q Did either Jesus or his personal orderly accompany your patrol to Banga?

A No, he did not go.

Q Did you have any occasion to conduct any questions to guerrilla suspects yourself?

A No.

Q Did you go to Banga for a second time?

A Yes.

Q When was it?

A On the 23rd.

Q Did anything unusual happen on that second trip?

A Nothing happened on that expedition. We went to a place about two kilometers north of Banga to gather information but we did not see anyone.

Q When you passed through Banga on this trip did you see any of the corpses of any of the people who were machine-gunned on the previous trip?

A I do not remember clearly but there may have been about two.

Q What happened the next day?

A About five o'clock in the morning of the 24th I took my whole platoon and was ordered to go to a place called Madarag, about eight kilometers west of Banga. We were ordered to attack enemy intelligence that was moving in that area.

Q What happened on the return trip?

A About four or five kilometers outside of Balete, on our way, we received an assault attack from between ten to twenty men. We received no casualties. We fought for about ten minutes and killed one enemy. We captured one rifle and about eighty or ninety rounds of ammunition. We headed for Madarag through the mountains carrying out security measures and arrived on the main road between Libacao and Banga. Due to heavy rains the Aklan River, which was nearby, had swollen to about 300 meters and we were not able to cross this river to go to Madarag. We withdrew from the river and we sighted -- and on the road between Libacao and Banga we captured a guerrilla sergeant who was a sentry there. We took this sergeant and we followed the same road which we took through the mountains. When we reached the spot where we were attacked previously we were attacked again. They attacked suddenly and they escaped. We tried to pursue them but we were not able to

do anything about it. We returned to Balete about 1900 that night and handed over the guerrilla sergeant, the rifle, and the ammunition to Captain Kengo Watanabe and reported the happenings of the day.

Q Did you report the machine-gun incident that happened in Banga on 24 of October?

A Yes, I reported that.

Q What happened on the 25th of October?

A On the 25th, about 1400, the Tozuka headquarters, which was in Talon, came to Balete with rations for the unit. The 3rd Company, the 4th Company, the Kuwano Platoon, and the Watanabe Intelligence Headquarters took a week's ration and left Balete at 1700. We left Balete and went toward the southwest and made a night march on a trail in the mountain. That night we did not march very much. We walked about five kilometers but due to the darkness we got lost so we slept in the mountains that night.

Q What was the purpose of this patrol that you were going on to Mount Aklan?

A Capture of wireless kits.

Q What wireless?

A The wireless setthat was communicating with Australia, Station NCL.

Q What happened in the mountains near Alfonso XII?

A Nothing had been in the mountains there.

Q Did you capture any guerrillas or find any wireless equipment?

A We captured wireless kit. We captured a guerrilla noncom but we did not capture any officer.

Q When was this?

A On the 30th we attacked Mount Aklan. On the 31st we captured the wireless kit but we did not capture any transmitting set. We just got a receiver, some motor, and a generator, and some parts.

Q Were there any of your men wounded on that trip?

A Sergeant Ono, the squad leader of the first squad, was injured by a spear piercing his breast. The spear penetrated his left breast and was sticking out from his back about one foot.

Q What happened on October 30th?

A On October 30th we attacked Mt. Aklan. We had information that the guerrilla leaders, Chavez and Peralta, were in the vicinity but they had already escaped and we were looking for guerrillas until nightfall.

Q About that time did you capture a radio or wireless station

A There was a station on the top of the mount. There were two houses and they had a generator set there and an antenna was stretched between two trees.

Q Did you also find certain other Army equipment at that time?

A We discovered seven wireless receiving sets, about two hundred radio tubes, about twenty batteries, around three drums of gasoline, one large motor, one large generator, about twenty-odd flashlights, the Army type, and about thirty batteries, quantities of motor oil, and about two or three hundred meters of wire.

Q Did you see any civilians while you were in the mountains?

A We did not see a single civilian.

Q When did your expedition return from this mountain?

A We came out of Mt. Aklan on the 6th of November.

Q Was this Jesus that you referred to earlier in your testimony with this expedition?

A Jesus did not go on that one.

Q When did the expedition then go to Calibo?

A We left Mt. Aklan on the 6th, went to Libacao on the 8th, and went to Calibo on the 10th.

Q Did you leave Calibo, then, to go to Tablas Island?

A We rested at Calibo about three or four days, and on November 13th we left for Tablas.

Q When did you return from Tablas to Panay Island?

A I believe it was on the 25th that we returned to New Washington.

LIEUTENANT MC CULLOUGH: For the information of the Commission and prosecution, from now on this witness' testimony will relate to Specification No. 36.

Q After completing the patrol of Tablas Island where did you go next?

A From Tablas we came back to New Washington, and then we went to Calibo and then to the west of Calibo.

Q Where did you go next?

A From Calibo we crossed the bridge across the Aklan River. We crossed through Numancia and arrived at Malinao.

Q Did you later separate from this unit?

A That expedition lasted about a week and I contracted malaria so I was taken back on a stretcher through the mountains.

Q Where were you taken to?

A We left Malinao and through Libacao and came out on the road toward Banga. I went to Banga.

Q Did they then return you to Iloilo?

A I left Banga on December 3rd and was taken to Calibo on the 4th by auto. On the 7th I was taken on a ship from New Washington under Lieutenant Matsuno and on the 8th I arrived at Iloilo.

Q Do you recall the name of the ship that you went back on?

A Probably I believe it was B-3, Otsu-san.

Q Then when did you arrive at Iloilo?

A On the 8th of December.

Q What year?

A 1943.

Q How do you remember that date?

A I remember it because this was the anniversary of the day when the war broke out.

Q How long were you confined with malaria at Iloilo?

A I was confined to my bed till about the 28th of December.

Q How do you remember this date?

A The unit came back from the punitive expedition on the 30th and I remember that I was up and around the day before.

Q Who were the other members of the unit that were with you when you separated?

INTERPRETER OGITA: Do you mean, who accompanied you?

Q Who were the members of your company who were with you when you separated from your unit and returned back to Iloilo City?

A I went back alone, but at Calibo 1st Lieutenant Michikita and Sergeant Major Koike were there.

Q Who, if you know, were the officers that accompanied the patrol across country or overland to Iloilo?

A Captain Kengo Watanabe, 1st Lieutenant Fujii, Captain Yoshioka, and 2nd Lieutenant Okuda. These are the ones that I remember.

Q Was Colonel Hideni Watanabe with this expedition that you described at any time?

A No.

LIEUTENANT MC CULLOUGH: Cross-examination.

COLONEL HAMBY: At this time the Commission will take a short recess.

(Short recess.)

COLONEL HAMBY: The Commission is now in session.

The prosecutor will instruct the witness that he does not have to give evidence that is incriminating against himself in his testimony.

CAPTAIN YARD: In answer to certain questions which the prosecution may direct to you, I have been instructed to inform you by the Commission that you need not answer if you believe your answer would incriminate you.

(Interpreter Ogita translated to the witness.)

CAPTAIN YARD: Sir, I understand, however, that this privilege against self-incrimination runs only toward such evidence as would implicate this accused in any war crimes trial wherein he might be accused of the commission of a war crime. Is that correct?

COLONEL HAMBY: That is the understanding of the commission.

CROSS-EXAMINATION

BY CAPTAIN YARD:

Q When did Lieutenant Colonel Tozuka become your commanding officer?

A About the beginning of February 1943.

Q And how long did he continue as your commanding officer?

A Till the surrender.

Q And when was that?

A September 2, 1945.

Q While you were on Panay Island did you ever know of any trials accorded to guerrilla, guerrilla suspects, or civilians?

A I don't know.

Q Do you mean that you didn't see any or you don't know whether there were any or not?

A I did not see or hear of any. I don't know anything about it.

Q Calling your attention to the first part of March 1946, do you recall being interrogated and signing a statement which was taken by Lieutenant Shepherd of prosecution (pointing to Lieutenant Shepherd)?

A Yes.

Q Did you not state, in answer to the question, "Did you accompany a punitive expedition in the month of October 1943 to the vicinity of Batan, Capiz?" --did you not answer, "No"?

A Yes, I answered, "No."

Q And that was when you were under an oath sworn on Buddha, is that not right?

A Yes.

Q And that answer was a lie, is that not right?

A The reason I said that was because upon coming to the prison camps in Manila, in Canlubang, and Nichols Field, I heard that the trials here were a farce and that just to go on a punitive expedition warranted a death sentence.

Q As a matter of fact you escaped once from Nichols Field

after you had been incarcerated there, is that not right?

A Yes.

Q As a matter of fact, in that same statement, in answer to the question, "Did you ever take part in any punitive expedition?" you answered, "Yes." Is that not right?

A Yes.

Q So that the reason which you gave in answer to my former question, being that you would not be accorded a fair trial, was also not true, is that correct, since you had already in that statement stated you were on a punitive expedition?

A It is not a lie. The mind of a human being changes.

Q And in that same statement, in answer to the question, "Were you ever in the province of Capiz?" you answered, "No. Once I went to the province of Antique and once I went to Guimaras Island and once to Bacolod, Iloilo Island, but never did I go to Capiz." Is that not right?

A That is what I said.

Q Why did you say that?

A Upon coming to Manila from Leyte, I had heard too often that the trials are very unfair and that just to go on a punitive expedition meant death. So that is why I lied on this initial interrogation.

Q And this was so even though you had already admitted that you were on a punitive expedition?

A Yes.

Q When you got to Batan, on October 18, 1943, how many civilians did you see killed there?

A I have never seen any of them killed.

Q Did you not see more than 100 killed at Batan on that expedition?

A I did not see.

Q Did you ever kill anybody on that expedition?

A No.

Q Did you ever, in a statement in your own handwriting, say that you had killed 140 people on that expedition?

A I wrote it because the man of the prosecution frightened me. He told me that it would mean my life if I did not write it.

Q Was he present when you wrote it?

A Yes, this man came to investigate me.

Q Did you write the statement yourself?

A Yes.

Q Are you sure that you did not dictate the statement to a Japanese-American soldier of the United States Army who wrote it himself as you dictated it to him?

A Yes, that is true.

Q Well, then, your former answer that you wrote the statement is a lie, too, is that right?

A That was a mistake.

Q And after the statement was written by the Nisei, was it not handed to you for correction?

A Yes, I read it and I signed it.

Q You signed it on four places on two pages, is that correct?

A I believe so.

Q Are you sure that you didn't give this statement and sign it because Sergeant Morio Matsuzaki pled with you to tell the truth?

A There was no such thing.

Q Did Sergeant Matsuzaki talk to you about giving this statement?

A No.

Q Was Sergeant Matsuzaki in the tent when you signed the statement?

A Yes, Sergeant Matsuzaki was in the tent for that purpose, but I was not in the regular tent. I was in a guardhouse, a guardroom, by myself, on the bare ground.

But you signed the statement in the tent, isn't that right?

A At that time the prosecutor called me to the tent.

Q And you signed it in the tent, is that right?

A In the tent there was the prosecutor, the American interpreter, Sergeant Matsuzaki, and myself; the four of us.

Q Did you ever hear that on the subjugation of Tablas Island, Lieutenant Kumai was using torture on the Filipinos?

A Yes, I heard about it.

Q Then that statement in this statement which you made was correct, is that right?

A Yes, that is the truth. I heard about it from the orderly after I returned.

Q And number five in your statement wherein you stated, "In the incident of the killing of the one hundred forty men I now confess that I was there; I did it all." Is that true or is it not true?

A That is a lie.

Q And that was referring to Batan in Capiz Province on or about 18 October 1943; isn't that right?

A When I wrote that I killed one hundred forty, I just wrote a lie.

Q You had been asked a question as to whether or not you had killed one hundred forty persons at or near Batan, Capiz Province, on or about 18 October 1943; is that not right?

(Discussion ensued between prosecution and interpreter out of hearing of the Commission.)

A Yes.

Q And is it not true that in answer to a question relating to the time and place where this happened, you stated, "I cannot remember the time and the place, but after the expedition I was told that it was in Batan. Most of the civilians were executed by me. Some were executed by Lieutenant Otsuka, but mostly by me." Is that not right?

A I did not state that. I stated that I was left behind and the unit was advancing, and as the prisoners were brought in I killed them of my own accord with orders from no one.

COLONEL HAMBY: Will the reporter read the last answer, please.

(The last answer was read by the reporter.)

Q But you did say you didn't know the time and place where it happened, is that right?

A At that time I did not know the time and place but later on, after I was put out of the guardhouse, I talked with some men from my own battalion and found out and that is the way I came to the conclusion of dates which I mentioned.

Q Then you didn't know it was Batan until after you had talked with other prisoners at Nichols Field, is that right?

A I knew the place. I heard that at Batan that night.

Q How do you account for the fact that in your testimony here today, you've known the name of every place and the exact time when everything happened?

A Once the initial date is established I was able to tell what followed chronologically because we walked the mountains and I can tell. However, if someone asked me out of a clear sky, "What date was a certain expedition?" I would not be able to recall the date.

Q But you can remember the exact time of day when certain things happened?

A If it was something which concerned myself, I can remember generally.

Q Do you know the Japanese sitting next to General Kono (pointing to Interpreter Hamamoto)?

A I met him after I came here.

Q When was the last time you talked with him concerning your testimony in this trial?

A The last time I talked to him regarding this was about four or five days ago.

Q Did you execute seven Chinese on Tablas Island?

A No.

Q Why did you say that you had executed seven Chinese on the order of Captain Watanabe.

A I was in this guardhouse for about a week at that time. It was after I came out of the mountains and I was in a very poor physical condition. They would only give me about half a cup of water and a little bread, and my sole desire was to get out of there and I thought perhaps if I said anything they would let me out of that place.

Q Why was it, then, that you didn't remember these things when you first talked with Lieutenant Shepherd?

A What do you mean when you say "these things"?

Q These killings or tortures that you told about later.

A I think it would be the same in anyone's case, even the prosecutor, if he is forced to hide in the mountains and then finally surrender and for seventeen days just have a small piece of bread each day and in a very weak physical condition -- he would not be able to remember anything that took place three years before.

Q But you escaped to the mountains. You were not forced to go, is that not right?

A Naturally I escaped.

Q Would you say that Lieutenant Kumai tortured prisoners when he questioned them?

A I never said any such thing.

Q Did you say that -- ?

CAPTAIN YARD: All right. Just a moment. (To interpreter) You tell him, may it please the Commission, that he should answer my questions. We want nothing but the answers to the questions.'

COLONEL HAMBY: Proceed, Interpreter, and tell him that.

LIEUTENANT WATERS: If the Commission please, he has the right to explain any answer he may give to a question.

COLONEL HAMBY: Yes, translate the last part of his statement that he was giving.

A I have said that I heard of such things, but I don't believe I said he definitely did it himself.

Q Did you say that Lieutenant Kumai required the prisoners to be naked while they were being questioned and tortured?

A I did not say that.

Q Is that true?

A I think I said that it was Lieutenant Ishikawa.

Q Then is it true that Lieutenant Ishikawa tortured prisoners when he was questioning them?

A I said that but I didn't say anything about Lieutenant Kumai.

Q Was Lieutenant Ishikawa under the command of Lieutenant Colonel Tozuka?

A Yes.

Q During what period was this?

A During the same period that I was.

Q I show you what has been marked for the purpose of identification as Prosecution's Exhibit 30, and ask if this is your signature appearing at the top of the first page of this Exhibit 30.

A Yes.

Q And at the bottom of that page.

A It is the same.

Q And at the top of the second page and at the bottom of the second page?

A Yes.

Q And at the end of the third page.

A Yes.

Q And this is the statement which you dictated to the Nisei and which you signed?

A Yes.

Q Did you see any women and children in Batan on October 18, 1943?

A No.

Q Did you see the bodies of any dead women and children in Batan on the 18th or 19th of October 1943?

A No, I did not see any.

Q Where were the women and children from the town?

A They were not there in the town when we landed.

Q Where were they?

A I do not know.

Q Well, at some later time did you see the women and children in Batan?

A That night we went to the east about two kilometers, and that night when I came back to report I saw a bunch of them.

Q Was Otsuka killing any of them when you saw them?

A I do not know.

Q I show you Prosecution's Exhibit 5 and ask you whose picture that is.

A That is Lieutenant Otsuka.

Q He was on that expedition with you, wasn't he?

A Yes, he was with us; he was there.

Q And he was in Batan, is that right?

A He was with us.

Q He was at Altavas, wasn't he?

A He was.

Q He was at Balete?

A We were together.

Q I show you Prosecution's Exhibit 7 and ask you whose picture that is.

A 1st Lieutenant Kumai.

Q Was he present on the expedition, too?

A Yes.

Q I show you Prosecution's Exhibit 11 and ask you whose picture that is.

A That is myself; I was grimacing.

Q Did you see about forty persons killed at Altavas?

A No.

Q Did you see Otsuka kill anyone at Altavas?

A No.

Q Did you see anyone killed at Balete?

A No.

Q Did you bring any prisoners back with you from Banga when you went on your patrols?

A Yes.

Q What was done with those prisoners?

A I was in the combat outfit and I just brought them back. I hand them over to Captain Watanabe and after that I do not know what happens to them.

Q Did you bring them from Banga on more than one occasion?

A Just once.

Q About how many did you bring?

A I don't remember clearly but it was probably between sixteen and twenty.

Q When you landed on Batan no one fired on the Japanese forces, is that correct?

A At the time we were landing I don't believe there was any firing.

Q Did you see any women and children in Altavas?

A I did not see any at Altavas.

Q Did you see any women and children at Balete?

A About three days later on the afternoon of around the 22nd I remember seeing about ten of them in the market place.

Q Did you see any of the women and children killed there?

A No.

Q Did you hear that Lieutenant Kumai had tortured a blind girl on Tablas Island?

A I have never heard of it.

Q Do you remember telling Lieutenant Shepherd that you had heard of it?

A That is something else. I did not mention anything about a blind girl. She was just a regular native, a resident.

Q Then you did hear that Lieutenant Kumai had tortured a girl on Tablas Island, is that right?

A Yes, that is true.

Q Who told you?

A My orderly named Nakano, who was left behind because he hurt his foot.

Q Did you know an interpreter by the name of Simoje?

A Yes, I remember an interpreter by the name of Simoje.

Q Did you hear that Simoje had killed an old man on Tablas Island?

A No, I have never heard of it.

Q Did you ever hear that Simoje killed anyone?

A No.

Q Did you hear that seventeen Americans had been killed on an expedition that went through Tapaz?

A I heard about this also from my orderly after the expedition came back.

Q Why did you tell Lieutenant Shepherd that you couldn't recall having heard anything like that?

A I don't remember well whether I said that to him or not.

Q Do you deny that you said that to him?

A I may have said it but I forgot.

Q At the mountains near Libacao did you and Otsuka kill any civilians?

A No.

Q Can you tell the difference between a guerrilla and a civilian?

A Yes.

Q How?

A Anyone interfering with military activity is a guerrilla. They have arms. Even if they do not have arms, if they interfere with military activities they are guerrillas.

Q Would you consider the eighty men that were machine-gunned guerrillas?

A I cannot state definitely that they are all guerrillas; however, there may have been some in the group. But I will not say that they are all guerrillas.

Q Did Lieutenant Colonel Tozuka teach you about the Rules of Land Warfare?

A I am not sure. It seems that I have heard about it. I listened to it once but I am not sure.

Q You mean you listened to the Rules of Land Warfare once, is that correct?

A There was a standing order that residents must not be killed and we did not especially read the Rules of Land Warfare but I believe this is part of the Rules of Land Warfare.

Q Then would you say that no civilians were killed at Batan?

A Who said that?

Q I say, would you say that no civilians were killed at Batan on the expedition?

A I would not say such a thing.

Q Well, were there civilians killed there?

A I have heard later that they were killed.

Q By whom?

A I heard from the leading private, Oto, who was an orderly in the headquarters. He was a messenger in the expedition. I heard it from him.

Q Did you hear that civilians were killed by the Japanese at Altavas on that expedition?

A No.

Q Did you hear that civilians were killed by the Japanese at Balete on that expedition?

A Yes, I heard about it later.

Q Who told you that?

A I forgot, I don't remember exactly who told it to me.

Q Did you kill any civilians on that expedition?

A Aside from the incident where my subordinate machine-gunned the people, there is not a single occasion.

Q On the entire expedition about how many civilians would you say were killed by the Japanese forces excluding the eighty at Banga?

A I do not know.

Q Could you give an approximation?

A I cannot make an estimation.

Q Would you say there would be more or less than 500?

A I do not know.

Q Would there be more or less than 300?

A I do not know.

CAPTAIN YARD: That's all.

LIEUTENANT MC CULLOUGH: Just one question, sir.

REDIRECT EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q In the testimony that you have given today in this proceeding have you told the truth upon your word as a soldier in the Japanese Army and according to the God or Gods that you believe in?

A Yes.

LIEUTENANT MC CULLOUGH: Sir, that's all.

COLONEL HAMBY: Questions by the Commission? There appear to be none. The witness is excused. The Commission will adjourn until 8:30 tomorrow morning.

(The Commission adjourned at 1700 hours, 25 April 1946.)

(2055)

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Armed Forces
Western Pacific

UNITED STATES OF AMERICA	
vs	
TAKESHI KONO	PUBLIC TRIAL

VOLUME VIII

PAGES 720 TO 768

MANILA, P. I.

DATE: 26 April 1946

COPY NO.: 3

CERTIFICATION

This certifies that this volume is a part of the proceedings of the Military Commission appointed by Paragraph 21, Special Orders No. 85, Headquarters, United States Army Forces, Western Pacific, dated 12 April 1946, in the trial of the case of the United States of America v. Takeshi Kono.

Dated 7 May 1946

W. R. Hamby

WILLIAM R. HAMBY
Colonel, CAV
President of Commission

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Armed Forces
Western Pacific

UNITED STATES OF AMERICA)
)
vs)
) PUBLIC TRIAL
TAKESHI KONO)
- - - - - - - - - - - - - - -)

Court No. 1
High Commissioner's Residence
Manila, P. I.
26 April 1946

Met, pursuant to adjournment, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL WILLIAM R. HAMBY, CAV, President and Law Member
COLONEL JOHN L. GOFF, CAC
COLONEL JOSEPH H. WARREN, INF
LIEUTENANT COLONEL JOHN A. CHASE, (CMP) FA
CAPTAIN JACK ELLINGSON, CMP

APPEARANCES:

FOR THE PROSECUTION:

(AS PREVIOUSLY NOTED.)

FOR THE DEFENSE:

(AS PREVIOUSLY NOTED.)

INTERPRETERS FOR THE COMMISSION:

(AS PREVIOUSLY NOTED.)

REPORTERS FOR THE COMMISSION:

ARNOLD COHEN
WILLIAM COHEN

I N D E X

WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS	EXAM.BY COMM.
Masakazu Yamaguchi	720	729			
Hidemi Watanabe	731	759			

P R O C E E D I N G S

The Commission convened, pursuant to adjournment, at 0830, 26 April 1946, at Court No. 1, High Commissioner's Residence, Manila, P.I.

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: May the record show that all members of the Commission are present; that the accused together with his defense counsel and personal interpreter, and members of the prosecution are present.

MASAKAZU YAMAGUCHI

a witness for the defense, was duly sworn and testified as follows through Interpreters Ushijima and Kato:

DIRECT EXAMINATION

BY LIEUTENANT WATERS:

Q Please state your name.

A Masakazu Yamaguchi.

Q What was your rank in the Japanese Army at the time of the surrender?

A Colonel.

Q In what capacity were you serving in your last assignment prior to surrender?

A Battalion commander of the 172d Independent Infantry Battalion.

Q Did you ever serve under Lieutenant General Takeshi Kono?

A I was under the direct command of Lieutenant General Kono.

Q Between what dates did you serve under General Kono?

A From May 1943 till just before the surrender, August 14, 1945.

CAPTAIN YARD: Will you read back the last answer, please.

(The last answer was read by the reporter.)

LIEUTENANT MC CULLOUGH: The Commission has instructed me to inform you that you may refuse to testify to any matter which would incriminate you in later cases brought against you as a war criminal, and that if you are asked such questions, either on direct or cross-examination, you may refuse to answer those questions on the grounds of personal privilege as guaranteed you under the Fifth Amendment to the Constitution of the United States.

CAPTAIN YARD: May it please the Commission, the Government objects to the extension of the privilege of self-incrimination to this witness for the reason that this privilege is not accorded the witness under the letters and rules of procedure which govern these trials, and for the further reason that the benefits of the Fifth Amendment do not extend to this witness. We offer as precedent for this statement the case of the United States of America vs. Tomoyuki Yamashita.

COLONEL HAMBY: The Commission will take a short recess.

(Short recess.)

COLONEL HAMBY: The Commission is now in session. The objection of the prosecution is overruled.

(The interpreter translated to the witness.)

THE WITNESS: (Through interpreter) I understand.

BY LIEUTENANT WATERS:

Q During the time that you served under General Kono what was the chain of command between him and yourself?

A I was under the direct command of Lieutenant General Kono.

Q While you were battalion commander of the 172nd Independent Infantry Battalion what was the physical or geographical jurisdiction under your command?

A 174th Battalion Commander.

Q Is it 172nd or 174th?

A It's 172nd Battalion of the 174th Brigade.

LIEUTENANT WATERS: Will the reporter read my original question.

(The requested question was read by the reporter as follows:

"Q While you were battalion commander of the 172nd Independent Infantry Battalion what was the physical or geographical jurisdiction under your command?")

A From May 1943 up to August 1944 I was security commander of all of Negros Island. Subsequently, when the Kawano Army Group came to Negros, I came under his army group command and stayed as such until the time of surrender.

CAPTAIN YARD: Just a moment, please. Will you read back the last half of that answer, starting with, "when the Kawano army group --."

(The requested part of the answer was read by the reporter.)

Q When you speak of the Kawano unit, do you mean General Kono's command?

A Yes.

Q What was the mission of the 172nd Independent Infantry Battalion during this time?

A To maintain security, peace, and order on Negros Island. Furthermore, to guard against the attack of United States forces from the rear and to maintain security against guerrilla action, and to guard the safety of the rear areas on Negros.

Q I ask you to state whether or not the maintenance of internal peace and order was part of your strategic objective.

A It is a strategic objective to guard Negros, which is a strong point in the rear.

Q Please state whether or not there were obstacles to the carrying out of that part of your strategic objective on Negros Island.

A At this time, on Negros, they had Lieutenant Colonel Mata and Lieutenant Colonel Habusede as the center or core. The equipment of the Japanese Army as compared with the enemy, which had Thompsons, carbines, and automatic rifles, they were much more powerful. The guerrillas numbered around ten thousand within the island. And they had wireless kits for communication and liaison purposes between the islands and outside of the islands to Australia, and powerful enough to have liaison with United States mainland. These guerrillas were one of the main obstacles.

Q Did these guerrilla forces attack the Japanese garrisons on Negros?

A Small groups of Japanese soldiers had to guard a wide area and would receive constant attacks from powerful

guerrilla forces. Communication lines to the rear area were always attacked and damaged, especially around April of 1944 in the barrio of Himamaylan on south Southern Negros, the guerrillas attacked and burned the village and considerable amount of people were killed and some were taken to the mountains.

South of that point was a big city called Kabankalan and for over a period of about one month guerrillas enveloped this town and a security unit was almost annihilated. The town was burned. I went to help this situation and after a difficult time broke down the envelopment, but many people in the Japanese area were taken to the mountains or killed. This is only one of the examples of a small force guarding over a wide area.

Compared to the guerrillas, the Japanese forces only had single-loading rifles while they had automatic rifles and machine-guns, and to maintain a security guard was very hard and trying. As far as I can remember, for that one year the battalion lost about a third of its manpower.

Q I ask you to state whether or not you were familiar with the guerrilla situation at that time on the Island of Panay.

A I know, in general.

Q State whether or not the guerrilla situation on Panay was worse than the situation as you have stated it was on Negros.

A The situation on Negros was bad but I think that it was even worse on Panay.

Q Is it customary in the Japanese Army for commanders of subordinate units to receive copies of orders issued to other subordinate commanders?

A Yes, in order to understand the general conditions.

Q Do you remember receiving copies of operation orders issued by the Kono Brigade Headquarters in regards to Panay-coordinated guerrilla patrol about July 1943 and April 1944?

A I received them for purposes of reference.

Q Are you in a position to state what orders General Kono issued to Colonel Tozuka in regards to the Panay guerrilla patrol?

A I heard of the order that went to Lieutenant Colonel Tozuka and know of it as to include two items: to capture --

CAPTAIN YARD: Just a moment, please. I object and ask that the answer be stricken for the reason the best evidence would be the order itself. The witness has already testified that any orders that went to subordinate commanders, duplicate copies were received by other subordinate commanders. Therefore, the best evidence would be a copy of the orders and I think in the absence of such orders the witness should be properly qualified to show that he was in a position to know what was in these orders.

LIEUTENANT WATERS: The defense thinks the objection is well taken. We will go back and lay a predicate for this, if the Commission please.

COLONEL HAMBY: Objection sustained. Strike that answer.

Q State, if you know, where the copies of the orders issued by the Panay-coordinated guerrilla patrols that you received are at the present time.

A We burned all those in the mountains.

Q To the best of your knowledge are there any copies of these original orders still in existence?

A I had copies of those orders but during movements in the mountains we burned them all.

LIEUTENANT WATERS (To interpreter): Will you repeat the last question to him, please. It was not exactly responsive.

(The last question was read by the reporter and translated by the interpreter.)

A As far as I know they have all been burned and I can only remember them in my head.

Q In response to prior questions you have stated that you received copies of those orders for reference purposes. Do you at this time remember what was contained in those orders?

A On the orders sent to Panay Island and Negros Island the first two main items were, one, to capture guerrilla leaders and to take and capture wireless equipment stations. From the items three on down, which were small details and in many cases different to each unit, I cannot remember.

INTERPRETER USHIJIMA: Correction. That was included within the second paragraph of the order.

LIEUTENANT WATERS: Then we will ask that the interpretation of the answer to the prior question be changed to paragraph two, if the Commission please.

COLONEL HAMBY: So ordered.

Q Will you please tell what was included in paragraph two of those orders?

A To capture guerrilla leaders and to capture wireless equipment.

Q Was anything said in these orders in regards to treatment of civilian inhabitants?

A Concerning the treatment of civilians from the time of the advance into Negros, in accordance with the policy of the Far Eastern War, we were told the Filipino people are not our enemy; that we must lead them, sympathize and love them, and make them our friends, and make them a power for the Japanese Army. We constantly strived to carry this out. However, at the end of the orders it was written as a precaution to be careful in handling the people.

Q State yes or no whether or not this statement you have made was a standing order as relates to the treatment of civilians.

A Yes.

Q What was the policy of General Kono's headquarters with regard to treatment of captured guerrillas?

A Just as we handled the American-Filipino prisoners of the USAFFE in 1942, we released guerrilla captives at a later time. Those that opposed us in combat naturally were killed if they were shot. In the same way as the Japanese Army treated the United States Army Filipino prisoners, we treated the guerrillas the same way and released them later.

Q Will you describe what the program of release and rehabilitation of guerrillas in your command area was?

A In the City of Bacolod, in the front of the high school, a prisoner-of-war training camp was located and the prisoners were interned there for a period, and after receiving training they were released.

Q State briefly what this training and education consisted of

A We trained them to be leaders among the Filipino people. As a method for accomplishing this purpose, officers and teachers who had training were selected for this training. The period of training lasted for about two months. Those who completed their training were given diplomas and those with good marks received presents at the graduation. At the graduation, instructions and messages were given by the province governor and the mayor of the town and other prominent citizens. The number of graduates through a period of about one year totaled about one thousand, and for those who graduated jobs were located. Included among those were a wireless technician, a Captain Castillo, and a Captain Bidon, and a Monteliban, at present the Minister of Home and at that time a chief of the guerrilla.

CAPTAIN YARD: Sir, we realize that the defense must have considerable latitude in its case but it would seem to me that we are going far afield as to these matters which happened in Negros, particularly the line of testimony that this witness is giving. Does the defense have much more of this?

LIEUTENANT WATERS: We intend to turn him over at this time to cross-examination.

CROSS-EXAMINATION

BY CAPTAIN YARD:

Q Are you being held as a suspected war criminal?

A I do not know.

Q You are being held by United States Army authorities, is that right?

A Yes.

Q Your principal concern was the problems of Negros Island, is that right?

A Yes.

Q And that occupied all of your time, is that right? Strike that.

And your duties on Negros occupied all of your time, is that right?

A Yes.

Q And matters as to Panay Island, to which you have testified, were based on hearsay to you, is that right?

A What do you mean by "matters on Panay"?

Q Colonel Tozuka's problems and how he was handling them were not of any concern to you as commanding officer on Negros, is that right?

A Being under the command of the Kawano Army Group, we had similar objectives such as capturing guerrilla chiefs and wireless held by the enemy. These objectives were similar for both Negros and Panay Islands.

Q Colonel Tozuka didn't report to you as to what he was doing, is that right?

A No.

Q And you were under no duty to supervise or even change what was going on on Panay Island?

A No.

Q As to the guerrilla situation on Panay Island, it was just what you heard that it was, not what you knew of your own knowledge and observation?

A From previous times I heard the history of the American landing on Panay. When the Americans landed they had much difficulty against the guerrillas because the guerrillas had terrain features for them.

Q What you knew about Panay Island during the Kono command was what you heard only, isn't that right?

A Yes, only what I heard.

CAPTAIN YARD: That's all. No further questions.

COLONEL HAMBY: Questions by the defense?

LIEUTENANT WATERS: No, sir; none, sir.

COLONEL HAMBY: Questions by the Commission? There appear to be none. Witness excused.

(Witness excused.)

COLONEL HAMBY: The Commission will recess until one o'clock.

(The Commission recessed at 1100, 26 April 1946.)

AFTERNOON SESSION

The Commission convened, pursuant to recess, at 1300, 26 April 1946.

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: Sir, may the record show that all members of the Commission, accused together with defense counsel and personal interpreter, and members of the prosecution are present.

HIDEMI WATANABE

a witness for the defense, was duly sworn and testified as follows through Interpreters Ushijima, Kato and Ogita:

DIRECT EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Will you state your name, please.

A Hidemi Watanabe.

Q Were you formerly a member of the Imperial Japanese Army?

A Yes.

Q What rank did you hold?

A Lieutenant Colonel.

Q What were your duties?

A Staff officer of the Kono Unit.

Q Were you sent to the Philippine Islands?

A Yes, I came.

Q When did you arrive on the Philippine Islands?

A On May 8, 1943, I arrived in Manila. On the 13th of May, 1943, I arrived at the headquarters in Cebu.

Q At that time were General Kono's headquarters in Cebu?

A Yes.

Q Were those headquarters later transferred to Iloilo City on the Island of Panay?

A The headquarters did not move to Iloilo. For combat purposes a portion of it went to Iloilo. The headquarters remained in Cebu.

Q Did you yourself go to the headquarters of General Kono on Panay Island at Iloilo City?

A Yes.

Q When?

A July 2, 1943.

Q Did you remain, then, on Panay Island up to the date of surrender?

A No.

Q Were you on Panay Island at the time of surrender?

A No.

Q Where were you?

A At Bacolod in Negros.

Q And at all times, from the time you first went to Iloilo City until the date of surrender, were you directly under General Kono's command?

A No.

Q Whose command were you under?

A At the time of surrender I was under the command of Lieutenant General Fukuei of the 102nd Division.

Q Were you detailed to General Kono's Brigade?

A Yes, I was dispatched there.

Q Had you ever previously served under General Kono?

A Yes.

Q Prior to coming to the Philippines, where did you serve?

A In the personnel department of the War Ministry.

Q Do you know Captain Kengo Watanabe?

A I first met him after I came to the Philippines.

Q In your opinion, was there any resemblance in physical characteristics between you and Captain Kengo Watanabe?

A As far as the height is concerned, he is a little taller than I am. I have never compared our weights but generally we are about the same. As far as our face and our physical features are concerned, some people have said that there is a resemblance. However, as for myself, I cannot make any judgment.

Q Do I understand you correctly that the Kono headquarters were on Cebu. However, that they had an outpost headquarters at Iloilo City and the Island of Panay, is that correct?

A Yes, that is correct.

Q Did you yourself work at the outpost headquarters at Iloilo City.

A While the outpost was at Iloilo City I was there generally. However, there were times when I was not.

Q How many regular staff officers were at the Kono Brigade Headquarters in Iloilo City.

A I was the only staff officer.

Q Are you, then, familiar with what occurred in General Kono's Headquarters?

A Yes, I am.

Q I hand you Defense's Exhibit A and ask you to examine it to see whether or not that was the chain of command on the date shown.

A That chart has to be explained to me.

LIEUTENANT MC CULLOUGH: You might let the record show that the dates on the chart marked Exhibit A are not shown in Japanese; therefore, it is necessary to translate those dates to the witness in order to understand the question.

CAPTAIN YARD: This witness has a fair knowledge of English. He has written out in his own handwriting in English a statement to us. I believe that he can read anything that is written on that without the necessity of a lengthy interpretation.

LIEUTENANT MC CULLOUGH: We will concede that the witness has some knowledge of English. However, for just the same reasons that the prosecution used some English-speaking Filipinos to speak Tagalog, we prefer to have our witness speak Japanese because he understands the underlying principles of the language better than he understands English.

COLONEL HAMBY: The interpreter will translate the dates on that for him.

(The interpreter translated to the witness.)

THE WITNESS (Through Interpreter): As far as the organization of the chart is concerned, it is correct. However, this 173rd Infantry Battalion arrived in Cebu in January of 1944 and this 194th Infantry Battalion landed in May of 1944. However, the organizational chart was as it was previous to that time. I would like to add that much

to it.

Q Then with that correction which you have made on Exhibit A, otherwise would you say that it is correct?

A I would like to add the date to this organizational chart.

Q What do you have in mind?

A It is all right.

Q It is all right, then, as it is; is that correct?

A Are you referring to the second page too; all of them?

Q All four pages of the exhibit, yes.

A This is correct.

Q What was the chain of command between the 14th Army Headquarters and Kono's Headquarters?

A Do you mean the method of command?

Q The chain of command as to who was subordinate to the 14th Army Headquarters and whether or not Kono's headquarters was a subordinate unit to the 14th Army.

A That varies according to the period.

Q When was the 31st Independent Mixed Brigade activated.

A December of 1943.

Q Was the 31st Independent Mixed Brigade activated as the 77th Infantry Brigade on or about July 10, 1944?

A Yes.

Q Up to that time was General Kono's Headquarters directly subordinate to the 14th Army?

A Yes.

Q Now, after July 10, 1944, did the chain of command run from the 14th Army to the 35th Army Corps to the 102nd Division to General Kono's Headquarters?

A Yes.

Q And at that time was General Kono's command over the 77th Infantry Brigade?

A I don't understand the meaning of the question.

Q After July 10, 1944, was General Kono's Unit known as the 77th Infantry Brigade?

A After the date of July, 1944, the Independent 31st Mixed Brigade was changed to the 77th Brigade.

Q Then did it amount to a change in name only, that is, with the same personnel and General Kono as the commanding officer?

A Some of the set-up was changed too.

Q What changes were made?

A While it was the Independent 31st Mixed Brigade, there were six units, six battalions. After it was changed to the 77th Brigade, there were only four units.

Q How did the chain of command run above the 14th Army Headquarters up to the Emperor?

A Until the spring of 1943 the 14th Army was directly under the Imperial General Headquarters. However, after the spring of 1943 it was placed under the Supreme Southern Command. That is how I remember it.

Q Was the Supreme Southern Army Command directly under the Imperial General Headquarters?

A Yes.

Q Who was over the Supreme Southern Army Command? Withdraw that question.

Was the Imperial General Headquarters over the Supreme Southern Army Command?

A Yes.

Q Was the chief of the General Staff over the Imperial General Headquarters?

A The Imperial General Headquarters was directly under the Emperor and the Chief of General Staff was the head of the staff in the Imperial General Headquarters.

Q How long did General Kono remain or keep his headquarters in Iloilo City after it was transferred there on or about the 1st of July 1943?

A From the beginning of July 1943 until the end of November 1943. However, during this period he frequently returned to Cebu and also went to Manila on official business.

Q Were you in General Kono's headquarters in Iloilo City all during that time?

A Yes.

Q Why were the headquarters transferred from Cebu to Iloilo City, Panay?

A Our post headquarters was set up in Iloilo in order to take command of operations on Panay Island.

Q Did they receive any combat operations order from the 14th Army Headquarters at that time?

A Naturally he was under orders that the headquarters would move to Panay Island in order to carry out operations. He was under orders from the 14th Army.

Q In June of 1943 did General Kono receive any orders from the 14th Army to carry on certain combat operations on the Visayan Islands and particularly on Panay Island?

A Yes.

Q Will you briefly tell what the subject of those orders was?

CAPTAIN YARD: May it please the Commission, we object to this testimony as not being the best evidence.

LIEUTENANT MC CULLOUGH: Again, the point is well taken that that is not the best evidence, which we will admit. But as a matter of expediency we are trying to save time. I will lay the proper foundation so that this witness can testify orally to what was contained in these orders.

CAPTAIN YARD: If the defense counsel will state that these orders are not available, it is not necessary to go through the witness. We will take it from the statement of the defense counsel.

LIEUTENANT MC CULLOUGH: We have made an attempt to secure these orders in the preparation of the defense in this case. We have been informed by not only our own Army but by every Japanese witness that we have talked to

that these records were destroyed. Therefore, it is impossible for us to bring in those records as evidence and it is necessary for us to rely upon oral evidence through witnesses as to contents of those orders as the best evidence available.

CAPTAIN YARD: Withdraw the objection.

COLONEL HAMBY: Proceed.

A (Continuing) The order stated that in order to speedily set up the peace and order of the Visayan group, especially on Panay Island, the guerrilla heads on Panay must be captured and the communication set-up destroyed.

Q And was that order sent down to General Kono's headquarters from the 14th Army?

A Yes.

Q Were you there when the order itself was received?

A Yes.

Q Did you see the order?

A Yes.

Q Did you read it?

A Of course.

Q Do you know what General Kono did upon receipt of that order?

A General Kono said that operations on Panay Island must be started based on these orders and preparations must be made.

Q Do you recall the contents of General Kono's orders based upon the order which he had received from the 14th Army?

A Yes, I remember.

Q What was in it?

A I will eliminate the minute details. The most important part was the second paragraph of the order. It stated the object of the operation.

Q Was paragraph two of that operation order divided into two parts?

A Yes.

Q What were those two parts?

A The first was the capture of the guerrilla heads; the second was the destruction of the wireless setups.

Q To the best of your recollection, about how many combat operation orders against guerrillas did General Kono issue during the time of his command on Panay?

A Approximately twelve times.

Q How many orders were issued for the entire Visayan Land Group?

A Twenty-four times.

Q Did all of these orders that you have referred to contain paragraph two which was identical to the one which you have previously described?

A The second paragraph never varied on all twenty-four orders.

CAPTAIN YARD: Will the reporter read the last two questions and answers back, please?

(The last two questions and answers were read by the reporter.)

Q What is the significance of paragraph two in the combat operational order in the Japanese Army?

A It was significant that the object of the commanding officer was stated in the second paragraph. The orders may

be long but the second paragraph was the life of it.

Q Would you say, then, that paragraph two always contained the primary object of the order itself?

A Yes.

Q Were there any directives concerning the treatment of civilians in these orders?

A Yes, always.

Q Now, was that usually contained in the second or third paragraph from the end of the order itself?

A It was always written on the second or third paragraph from the end.

Q What do those paragraphs contain with particular reference to the treatment of civilians?

A In carrying out these expeditions precaution must be taken so that no harm will come to the people of the Philippines and that it is necessary to get their sympathy in order to secure peace and order in the Philippine Islands.

Q As soon as an order was issued by General Kono's headquarters, what was done about issuing or transmitting that order out to subordinate units on the Island of Panay?

A There were two methods. Because of the ocean, wireless communication was used to indicate the main points and later on a printed order was sent to the units to establish the authenticity.

Q In setting these orders up did you, as the chief of staff, receive them orally from General Kono and then write them up yourself?

A I draw up the draft of the order and when there were matters in it concerning certain officers I would show it

to those officers and then I would take it over to the general. He will look it over and if it is satisfactory he puts his seal on it; then it becomes an order.

Q Did the general ever make any changes in any of these orders after they were submitted to him for approval?

A Yes.

Q What changes did he make?

A Yes, on the second paragraph there were times when I would put something else on it besides the objective of the commanding officer, that is, something besides "capture the guerrilla heads and the destruction of the wireless communication sets." The general clearly stated that that must be eliminated from the second paragraph because it would cause misunderstanding to the one receiving the order.

Q Would you say that he was very particular about what these orders did contain and the language that was used in them?

A Yes.

Q Were they mimeographed then and sent out to the subordinate units through channels?

A As I have stated before, there were two types. The wire was used when there was a necessity for speedy transmission. The order would be written up for wireless message and we would receive the seal of the general. This order would be sent to the code officer who would put it into code. Then it would be sent to the communication officer who would transmit it to the units.

LIEUTENANT MC CULLOUGH: Sir, we are approximately at the center of this witness' testimony. I wonder if

the Commission would like to take a short recess.

COLONEL HAMBY: We will take a short recess.

(Short recess.)

COLONEL HAMBY: The Commission is now in session.

LIEUTENANT MC CULLOUGH: Will the interpreter remind the witness that he is still under oath.

(The interpreter translated to the witness.)

BY LIEUTENANT MC CULLOUGH:

Q Did you ever participate in any of the guerrilla operations on Panay?

A No.

Q Were you in Parara near Tigbauan on or about August 10, 1943?

A No.

Q Where were you at that time?

A I was in Cebu.

Q How do you recall that you were in Cebu during that particular period, or about that period?

A I was appointed as an examiner for the reserve officers who volunteered for active duty and was called back to Cebu.

Q Were you in Parara on or about August 11, 1943?

A No.

Q Where were you at that time?

A I was in Cebu at that time.

Q How do you recall that you were in Cebu?

A I remember because of the same reason that I went there for the examination of reserve officers who volunteered for active duty.

Q Were you ever in Parara?

A I have never been there.

Q Were you in the Tigbauan District on or about August 10 to 12, 1943?

A No.

Q Where were you?

A For the same reason I was in Cebu, giving the examination.

Q Were you in Tigbauan at a public gathering on or about August 14, 1943?

A No.

Q Where were you?

A I was in Cebu also.

Q What were you doing in Cebu?

A On the 14th I was organizing the grades for the examination in order to make a report.

Q Were you in Caamutan, near Passi, on or about September 11, 1943?

A No, I have never been there and I have never heard those place names.

Q Passi is a city almost directly north of Iloilo City in the Provice of Iloilo, approximately 12 to 15 kilometers south of the Iloilo-Capiz boundary. Were you ever in that area at any time in September of 1943?

A I have never been there.

Q Now, to be sure that we are talking about the same thing: There is a large-scale map on the wall here of the hearing room. I want you to step down off the witness stand and come over and look at this map. I point out the city of Passi and ask you if you have ever been in that vicinity during September of 1943.

A I have never been to such a place.

Q Were you in the barrio of Jimomoa in September 1943?

A No.

Q Now, I point out the barrio of Jimomoa on the map and ask you to say whether or not you were there during any time of September 1943, and particularly on September 11, 1943.

A I have never been there, not even once.

Q At that same time were you in the barrio of Madarag (indicating on map)?

A No, I have never been there.

Q Where were you during the month of September 1943?

A I was in the combat outpost headquarters in Iloilo City.

Q How do you know you were there?

A I was never out of Iloilo City because from the first of the month we had all the unit commanders on Visaya in preparing for a unit commanders' meeting which was to take place on two days of September -- 22nd and 23rd.

Q I'll again point out on the large-scale map on the wall the barrio of Nueva Invencion and ask you if you were in it during the month of September 1943, and particularly between the dates of September 12 and September 19.

A No, I have never been there.

Q Would your same answer apply to the previous question as to your whereabouts in 1943?

A Yes.

Q Now, were you in Madarag in September of 1943, and particularly during the dates of September 12 and September 19, 1943? I'll again point out to you the town or barrio of Madarag on the large-scale map.

A No, I have never been there.

Q Were you in the barrio of Buncal, near Jinomoa, during the month of September, and particularly on the 13th of September, 1943? I again refer you to the large-scale map on the wall.

A No, I have never been there.

Q Where were you at that time?

A At that same time I was in Iloilo preparing for the meeting.

Q Were you in Samponongbolo, Iloilo Province, on or about September 17, 1943, or any time during the month of September, and I'll again point out that barrio on the map?

A No, I have never been there.

Q Were you in Iloilo City at that time?

A Yes.

Q Were you in Maligayligay on or about September 18, 1943, or during any time during the month of September 1943? Again that will be pointed out on the map.

A No, I have not gone there.

Q Were you in the barrio of Navitasan on September 18, 1943, or any time during the month of September; and again I point out that barrio on the map?

A No, I have not gone there.

Q Were you in Iloilo City at that time?

A Yes.

Q Were you in the barrio of Gubaton during the month of September 1943, and particularly were you there on September 19, 1943? Again I point that barrio out on the large-scale map.

A No.

Q Where were you?

A I was at the Combat Command Headquarters in Iloilo City.

Q Were you in the city of Progreso in September of 1943, and particularly during September 19, 1943 -- which we will again point out on the large-scale map?

A No, I have not gone there.

Q Where were you?

A Iloilo City.

Q Were you in the barrio of Batoinsay between September 19 and 20, 1943, or any time during the month of September, 1943 -- which we will again point out on the large-scale map?

A No.

Q Where were you?

A I was at the outpost command headquarters in Iloilo City.

Q Were you also in your outpost during the 21st of September 1943?

A Yes, of course.

Q Were you ever in the barrio of Gaun during the month of September and particularly on or about the 21st of September?

A No, I have not gone there.

Q Were you in the barrio of Paquan in September 1943, and particularly on or about September 23, 1943?

A No.

Q Were you in the barrio of Alaginay on September 24, 1943, or any time during the month of September 1943?

A No.

Q Where were you?

A I was in Iloilo.

Q Were you in the barrio of Calamingan during September 1943, and particularly on September 25, 1943?

A No.

Q Were you in the barrio of Cadagmayan, near Pilar, Capiz Province, in September 1943, and particularly on or about September 30, 1943? That's just south of Pilar Bay on the north coast.

A Nos:'.

Q Where were you?

A I was in Iloilo.

Q Were you in the barrio of Hanog, near Leon, on or about April 10, 1944?

A No.

Q Where were you?

A I was in Cebu.

Q When were your Iloilo headquarters closed?

A At the end of December, I think it was 26 December 1943 we left Iloilo and went to Cebu.

Q Now, during the time you were one of General Kono's officers did you ever hear or witness General Kono order or authorize or encourage any atrocities against local inhabitants?

A Absolutely not.

Q Now, does that go to each and every individual who was subordinate to General Kono on Panay Island?

A Yes.

Q As his staff officer did you ever hear or receive any reports of any atrocities committed by troops under General Kono's command?

A No.

Q Did you ever report any atrocities to General Kono yourself?

A No.

Q Did you ever hear any of his subordinate officers or men ever report any atrocities to General Kono?

A I have not heard it once.

Q Were you with General Kono up to the time of surrender?

A I was not with Lieutenant General Kono during the period of July 10, 1944, to December 13, 1944.

Q Do you have any knowledge from any source as to whether or not General Kono had any knowledge of any of these atrocities that are charged against him in this trial prior to the surrender?

A No, I did not know.

Q Being one of his staff officers, do you know what General Kono's reputation was among his subordinates with reference to the enforcement of military discipline?

A General Kono had the reputation of commending good men and punishing bad men. Some of his subordinates thought that he was too strict in discipline.

Q Do you recall any disciplinary measures that General Kono took against any of his subordinates?

A Yes.

Q What were they?

A I remember about ten indidents.

Q Will you relate what those ten were.

A The first time was, if I relate from the latest incident I remember, an officer in the headquarters of the army group was punished because he had mistranslated a telegram code. At that time I thought the punishment given to this officer was a little severe so I asked him to lighten the sentence but he said that if we lighten the sentence of an officer in the headquarters we could not demand punishment from other subordinates and we could not expect discipline otherwise; so he refused. As a policy Lieutenant General Kono said to punish all those bad ones and enforce discipline, and all the subordinate units followed his policy. In the Tozuka Unit, a unit subordinate to Kono, there were five or six such sentences, punishments. In the Omori Unit, later changed to the Nishimura Unit, I remember three incidents. In the Onishi Unit I remember three incidents. In the Yamaguchi Unit, two incidents. In the Taga Unit, one incident. Of these the most heavy ones which have been sent to the court-martial -- I remember three. At the present I remember that much.

Q And these three courts-Martial that you referred to, where were they sent to trial?

A They were sent to the Manila court-martial.

Q And were they all three Japanese soldiers or officers?

A Yes, they were Japanese soldiers.

Q And in your opinion were they serious cases?

A Naturally there were cases which necessitated a court-martial.

Q Was it necessary in the Japanese Army to refer court-martial cases for trial to Manila?

A Yes.

Q Did General Kono himself have court-martial authority to hold his own trials on Panay Island at any time?

A I do not think he had any authority.

Q Would it be necessary for him, then, to refer those cases to the headquarters of the 14th Army?

A Yes.

Q With reference to the patrols or expeditions that were sent out to subjugate the guerrillas, were there any tactical methods that were specifically prohibited by General Kono?

A In order to prohibit the damages to the civilians he prohibited certain things to the action. There were two items: one, he prohibited artillery shelling, and two, he prohibited aerial bombardment.

Q Did General Kono issue any instructions to his subordinates with reference to the treatment of civilians?

A Yes.

Q How were these orders transmitted to the subordinate units in the field?

A Before the units would go on operations, when the operational orders were given to the officers of the units going out on expeditions, Lieutenant General Kono would gather the commanders and give them instructions on the article which was the second or third from the last in the operation orders usually, and give them instructions concerning these civilians. And to those who were far away from the

unit commanders the main points of the orders were sent by a wireless.

Q As staff officer of General Kono did you ever explain, yourself, these orders which he issued and were you there to answer questions regarding them?

A When the unit commanders met I was usually the one that was there.

Q Did you ever explain these orders to those unit commanders who were there and answer any questions that they might have with regard to them?

A Yes.

Q When General Kono first took command of Iloilo City did he call together his subordinate commanders and lay down to them certain matters of policy and directives?

A Because of security reasons it was impractical to gather all the commanders, so instructions were given to all of them and these instructions were even given to the soldiers in his command.

Q Did they then become standing orders of General Kono?

A Yes.

Q There has been testimony given in this case of the killing of sixteen American missionaries by members of General Kono's command. Did you ever hear of this incident as a staff member of General Kono's headquarters?

A I have not heard of such killing.

Q After you became a prisoner of war did you hear about it?

A After General Kono was charged I heard it for the first time.

Q Were you ever in or near Camp Hopevale, Capiz Province, during the month of December 1943? And to make sure you know the location of that, we will point it out on the large-scale map on the board.

(Indicating on map.)

A I have never gone to such a place.

Q As a staff officer of General Kono, did you ever receive any report of the killing of American missionaries at Camp Hopevale during December 1943?

A I heard that there were Americans killed. Every half year there is a battle report issued indicating in tabulation form the losses of the enemy and our own losses, and the enemies captured. In the number of enemies captured on Panay there were some Americans listed. I do not know the number. They were included as guerrillas.

Q Did you hear of Americans being killed or did you read that in the semi-annual report that was submitted to General Kono's headquarters?

A It appeared in the battle report. These Americans were listed as being in guerrilla forces on Panay Island.

Q Do you know whether or not there were any Americans with the guerrillas on Panay Island at that time?

A Yes, I have heard of reports of Americans being in the guerrillas on Panay.

Q Do you know whether or not General Kono received any reports or had any knowledge of any tortures or the killing of the American missionaries at Camp Hopevale?

A No.

Q Did you accompany General Kono to his headquarters in the hills of San Juan in the Negros Islands when he withdrew from Bacolod?

A Yes.

Q Do you recall an airplane crashing there, or of receiving reports of the crash of an American airplane?

A I heard of it through intelligence.

Q What did you hear from your intelligence?

A I don't remember the date but I believe it was mid-April. I received a report from intelligence that a B-24 aircraft crashed and was burning on a mountain about three kilometers northeast of our outpost headquarters; in other words, it was on the other side of the mountain.

Q Do you know whether or not there were any survivors of that crash?

A I heard about this incident when I was on my way to General Kono for his approval on an order.

At that time we believed that since the plane was burning, everyone had burned to death. It was several days later that I heard from the intelligence that the Nakatani unit, which was carrying out security measures in the area where the aircraft crashed, made the following report. The main point of the report was that an American pilot suddenly appeared near the Nakatani headquarters. He was captured.

The pilot was investigated but they were unable to get much information out of him, so the Nakatani unit sent him to the intelligence section of headquarters. When I heard this from the intelligence I was in the operations' room with staff officer Maruyama, who was in charge of intelligence. Staff Officer Maruyama said that it may be better to report to the general after the captured flier is brought into headquarters. I agreed with him. At that time the American attack on our position was very fierce. They were pressing our central and left position. We didn't have any idea when our position might be penetrated.

At that time I was staff officer in charge of operations and I was taking charge of that. I believe it was the next day when the intelligence officer came again and told me that the prisoner that was reported had arrived and was investigated but he was unable to get much information out of him. The intelligence officer was reporting to Staff Officer Maruyama. I was in the next room so I overheard this. I heard that the prisoner had arrived and was questioned. So I asked him where the prisoner was at the present time. The intelligence officer told me that the information gathered by the Nakatani headquarters and the information gathered by the intelligence department from the prisoner did not vary in any way, so Major Watanabe took

charge of them. So I told Staff Officer Maruyama that this matter must be reported immediately to General Kono.

INTERPRETER OGITA: Sir, there is a word in the last part of the witness' answer which I translated, which I interpreted as "Take charge of." It could be taken as, "Was killed." Is it all right if I ask the witness which he meant?

COLONEL HAMBY: Yes.

INTERPRETER OGITA: The witness says instead of "Take charge," it is "Killed."

CAPTAIN YARD: Just a moment, please. (To reporter) Would you please read back what you have thus far.

(The reporter read back the last answer.)

CAPTAIN YARD: Do you mean "Killed" for "Take charge of"?

INTERPRETER OGITA: Yes.

CAPTAIN YARD: Then Major Watanabe killed him.

INTERPRETER OGITA: The witness now says the prisoner, the American flier, was killed by orders of Major Watanabe.

A (Continuing) I told Staff Officer Maruyama that this was a very serious matter and it was outside of the authority of Major Watanabe, so it must be reported immediately to General Kono. When this was reported to General Kono he immediately called me. General Kono said that "I heard that a prisoner was captured and after he was questioned he was killed. This is something outside the authority of Major Watanabe."

General Kono told me to take charge of the investigation of Major Watanabe and to prepare a punishment. I went back and conferred with Staff Officer Maruyama and some other staff officers and discussed the punishment. The discussion came to the point as to what the punishment should be. However, because of the battle situation, as I have mentioned before, we were not able to come to a conclusion. That day passed. The following day the enemy artillery was extremely fierce. It had been quite severe for the past two or three days and fairly accurate. The trees in the vicinity of the headquarters had been cleared out by the artillery and it was quite light there.

LIEUTENANT MC CULLOUGH: May we take a recess at this time?

COLONEL HAMBY: The Commission will take a a short recess.

(Short recess.)

COLONEL HAMBY: The Commission is now in session.

LIEUTENANT MC CULLOUGH: Will the interpreter again remind the witness that he is still under oath.

(The interpreter translated to the witness.)

BY LIEUTENANT MC CULLOUGH:

Q Was the report made to General Kono about this American aviator after Major Watanabe had already killed him?

A The report was made after the American was killed.

Q What action, then, did General Kono take?

A General Kono told me to prepare some severe punishment for Major Watanabe, who ordered the killing.

Q Then did you take that action that the general requested you to take?

A A study of this punishment was made. However, on the next day, due to the heavy American shelling of the headquarters, there were twenty-some-odd deaths, among them was Major Watanabe, Staff Officer Maruyama, one other officer, noncoms and some civilians attached to the Army.

Q Were Filipinos allowed in the immediate vicinity of General Kono's headquarters?

A They were not allowed.

LIEUTENANT MC CULLOUGH: You may cross-examine.

CROSS-EXAMINATION

BY CAPTAIN YARD:

Q At the time the American was killed what was Major Watanabe's duties?

A Major Watanabe was a ranking adjutant; he also was a part of the Intelligence, and he was in charge of interrogation of prisoners and also of guarding the prisoners.

Q When had he been promoted to the rank of major?

A December of 1944.

Q And prior to December 1944 his conduct and the manner in which he discharged his duties had been satisfactory, is that right?

A It cannot necessarily or always be called satisfactory.

Q Who recommended him for promotion?

A The unit commander is supposed to be the one.

Q Would that have been Lieutenant Colonel Tozuka?

A The promotion had been before the Independent Mixed Brigade became a division in December, so I do not know too much about it.

Q Well, wasn't he in the Tozuka Unit at the time he was promoted?

A No.

Q What unit was he in?

A The 72nd Brigade.

Q What were his duties in the 72nd Brigade?

A Ranking adjutant.

Q And that was General Kono's unit, is that right?

A Yes.

Q Had you received any reports that he had been mistreating civilians prior to December 1944?

A No.

Q Had you received reports that he had killed unarmed civilians?

A No, never.

Q Did you know that he was in charge of the expedition that went to the vicinity of Tapaz where the American missionaries were killed?

A I know that Major Watanabe was in charge of the expedition that went to that vicinity.

Q Do you know that he was on the expedition that went to Capiz Province by boat in October of 1943?

A Yes.

Q You were on Panay Island in August of 1943, weren't you?

A From the 9th of August, 1943, until the 15th of August, 1943, I was in Cebu.

Q And after the 15th of August, 1943, were you on Panay?

A I was in Iloilo.

Q You were on Panay Island in September of 1943, weren't you?

A Yes, I was on Panay Island but I was in Iloilo City.

Q You were on Panay Island in April of 1944, weren't you?

A I was not on Panay throughout the whole time.

Q But you were there during some part of April 1944?

A After the middle of the month I was not there all of the time, just part of the time.

Q Do I understand that any time you were on Panay Island in 1943 or 1944 you never went out of Iloilo City?

A I did not go out of the city of Iloilo, outside of the trips which I made to Cebu and Manila on business.

Q You went up to Calibo in May of 1944, didn't you?

A No, I did not go to Calibo in 1944.

Q Didn't you go to Calibo in May 1944 for the purpose of liaison and you returned to Iloilo quickly?

A That was a slip of my memory. It was a mistake.

Q And you went to Capiz in November of 1943, didn't you?

A Yes, I did go there.

Q When General Kono left Panay Island and you remained, you were in charge, weren't you?

A When did General Kono leave Panay, which date do you refer to?

Q On any date were you ever in command when General Kono left Panay Island?

A I was not the commanding officer.

Q Who was the commanding officer?

A The ranking officer in the assigned areas became the commanders.

Q Were you not consulted by civilian officials as the commanding officer on various occasions in the absence of General Kono?

A No.

Q Did you ever receive any complaints from any of the civilian officials about the mistreatment of the civilians by the Japanese soldiers?

A Never.

Q Were you ever visited by the governor, who complained to you about the mistreatment of civilians by the Japanese soldiers?

A No.

Q Did the governor ever visit you for any business matter?

A Yes, he has visited me.

Q Did you know Dr. Fermin G. Caram?

A Yes.

Q And he was the governor, isn't that right?

A Yes.

Q And do you recall you told him you were in command when he visited you on several occasions?

A I have never said that to him.

Q Do you remember that he complained to you in November of 1943 about the killing of innocent civilians?

A There was no such thing.

Q And do you recall that he complained to you even through 1944 about the killing of innocent civilians?

A There is no such thing.

Q And do you recall that on one occasion, after he had complained to you, your reply was, in English, "I understand, no more speak"?

A There is no such thing.

Q Do you recall when you were in command of the headquarters at San Miguel during one of the punitive expeditions?

A There is no such thing. I was never the commander.

Q Did you know a Japanese officer by the name of Lieutenant Yoshiea?

A No.

Q Do you recall that a Japanese officer by the name of Yoshiea spoke to you about the aunt of Confesor and the daughter of Patricio Confesor?

A I do not know of any officer by the name of Yoshiea.

Q Do you remember when you were in command at Oton?

A I was never the commander.

Q Do you recall when the governor spoke to you about the atrocities at Tigbauan where about 160 civilians had been killed?

A No.

Q Were you in command of the forces on Panay Island in December of 1944?

A No.

Q Do you recall hiding in the home of the governor during a time when they were afraid the American Navy was approaching in December of 1944?

A I have never hid in such place.

Q Do you remember going to the house of the governor of Iloilo in December, 1944, when there was danger of an American air attack?

A Yes, I was there once.

Q Did you tell him on that occasion that you were in command?

A No.

Q During 1943 and 1944, was General Kono in control of those under his command?

LIEUTENANT MC CULLOUGH: To which I object unless he specifically states what he means by the word "control." That may be interpreted either by the witness or by anyone else as meaning any one of a number of things.

CAPTAIN YARD: All right. I'll withdraw the question.

Q During 1943 did General Kono have any difficulty in maintaining discipline in his command?

A How do you mean?

CAPTAIN YARD: Just what I said.

(To interpreter): Ask him what part of the question he doesn't understand.

INTERPRETER OGITA: The part about "difficulty."

CAPTAIN YARD: All right. We'll withdraw it and put it this way.

Q Was General Kono able to maintain discipline in his command in 1943?

A Yes.

Q And was General Kono able to maintain discipline in his command in 1944?

A Yes.

Q And were the members of his command in 1943 and 1944 carrying out the orders which he gave them?

A Yes, they were following them.

Q And when they went on punitive expeditions did Kono receive battle reports of the result of these expeditions?

A No, not every time. We would receive wireless reports once in a while but not always.

Q Did you receive some type of a report whenever a mission was accomplished?

A The units in far-off places sent in a wireless report simply stating that the expedition had ended. The commanding officers of the units stationed close by would report to General Kono and tell him that the expedition had ended.

Q And would these reports tell what had happened on the expedition?

A Generally, the outline of the movements or activity on the expedition and also the battle report -- that would include casualties.

Q If any civilians were killed would this be reported to the general?

A I have never heard that a civilian was killed.

Q In 1943 and 1944 were there any civilians killed on Panay Island by members of the Imperial Japanese Army?

A I believe there were civilian casualties during combat.

Q But outside of combat were there any civilians killed during 1943 and 1944?

A I have never heard of such a thing.

Q Were any trials conducted by the military authorities on Panay Island during 1943 and 1944?

A I do not remember.

Q Do you recall any civilians having been tried before a military tribunal in 1943 or 1944?

A Which military tribunal?

Q The Japanese.

A There was no military tribunal on Panay Island.

Q Did you ever go to Guimaras Island?

A Yes, I went there for a short visit.

Q When was that?

A I don't remember too clearly but I believe it was around the end of August 1943.

Q Did you know a Filipino by the name of Candido Yngalla?

A Yes, I know the name Candido.

Q And do you know whether or not he went to Guimaras Island with you in August 1943?

A He is a person from Guimaras Island but I do not remember his going to Guimaras from Iloilo with myself.

Q Why did you go to Guimaras Island?

A I went there while the expedition was going on at Guimaras Island for a short visit.

Q This is a punitive expedition you mean?

A It is that expedition for the capturing of guerrillas.

Q While you were there did you hear that between six and seven hundred civilians had been killed?

A I have never heard of that.

Q Do you recall that Lieutenant Fujii was on that expedition?

A I do not know.

CAPTAIN YARD: That's all.

LIEUTENANT MC CULLOUGH: No further questions.

COLONEL GOFF: I have one question: Was the witness senior or junior in rank to Lieutenant Colonel Tozuka?

THE WITNESS (Through Interppeter Ogita): We have no command relationship and although our ranks are the same, Lieutenant Colonel Tozuka is the senior officer.

COLONEL HAMBY: There being no other questions, the witness is excused. The Commission will adjourn until 0830 tomorrow morning.

(The Commission adjourned at 1630 hours, 26 April 1946.)

(2055)

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Armed Forces
Western Pacific

UNITED STATES OF AMERICA	)	
vs	)	
TAKESHI KONO	)	PUBLIC TRIAL
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VOLUME IX

PAGES 769 TO 795

MANILA, P. I.

DATE: 27 April 1946

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CERTIFICATION

This certifies that this volume is a part of the proceedings of the Military Commission appointed by Paragraph 21, Special Orders No. 85, Headquarters, United States Army Forces, Western Pacific, dated 12 April 1946, in the trial of the case of the United States of America v. Takeshi Kono.

Dated 7 May 1946

W. R. Hamby

WILLIAM R. HAMBY
Colonel, CAV
President of Commission

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Armed Forces
Western Pacific

UNITED STATES OF AMERICA

vs

TAKESHI KONO

PUBLIC TRIAL

Court No. 1
High Commissioner's Residence
Manila, P. I.
27 April 1946

Met, pursuant to adjournment, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL WILLIAM R. HAMBY, CAV, President and Law Member
COLONEL JOHN L. GOFF, CAC
COLONEL JOSEPH H. WARREN, INF
LIEUTENANT COLONEL JOHN A. CHASE, (CMP) FA
CAPTAIN JACK ELLINGSON, CMP

APPEARANCES:

FOR THE PROSECUTION:

(AS PREVIOUSLY NOTED.)

FOR THE DEFENSE:

(AS PREVIOUSLY NOTED.)

INTERPRETERS FOR THE COMMISSION:

(AS PREVIOUSLY NOTED.)

REPORTERS FOR THE COMMISSION:

ARNOLD COHEN
WILLIAM COHEN

I N D E X

WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS	EXAM.BY COMM.
Yasuji Okada	770	777			778
Satoshi Wada	782	788	790		

P R O C E E D I N G S

The Commission convened, pursuant to adjournment, at 0830 hours, 27 April 1946, at Courtroom No. 1, High Commissioner's Residence, Manila, P.I.

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: Sir, may the record show that all members of the Commission are present, the accused together with his defense counsel and personal interpreter, and members of the prosecution staff, are present.

LIEUTENANT MC CULLOUGH: At this time, if the Commission please, we are ready to proceed with the defense's case. We have called down two Japanese nationals who are both in a civilian status in Japan at the present time. We arranged for a third witness to testify in this morning's proceedings named Hideichi Nakamura. Request was put in for him on the 24th of April to have him brought in from LUPOW, but he was a different person from the one we wanted, the first and last names being the same. Therefore, we do have only these two witnesses ready this morning. At the conclusion of their testimony the defense will ask for a recess until Monday morning, at which time we will put on the testimony of General Kono.

We call as our first witness Yasuji Okada.

YASUJI OKADA

a witness for the defense, was duly sworn and testified as follows through Interpreters Ogita and Kato:

DIRECT EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Will you state your name, please.

A Yasuji Okada.

Q Where do you live?

A City of Tokyo.

Q What is your status at the present time?

A I am a citizen of Japan.

Q What is your occupation at the present time?

A I am an official in the First Demobilization Ministry.

Q Where is its headquarters?

A In Tokyo.

Q Were you formerly a member of the Imperial Japanese Army?

A Yes.

Q What was your rank at the time of surrender?

A Colonel.

Q Were you ever sent by the Japanese High Command to the Philippine Islands?

A Yes.

Q Where were you sent?

A To Manila.

Q What unit did you first serve with in Manila?

A The headquarters of the 14th Army.

Q What were your duties?

A Staff officer.

Q When did you first arrive in Manila?

A December of 1942.

Q How long were you in Manila?

A Until June of 1944.

Q After June of 1944 where did you go?

A To Tokyo.

Q Were you in Japan then up until the time of surrender?

A I came to the Philippines again.

Q When did you return to the Philippines?

A January of 1945.

Q What part of the Philippines did you return to at that time?

A Clark Field.

Q Were you then in the Philippines up until surrender?

A Yes.

Q On the second trip did you also assume your duties as a staff officer?

A Yes.

Q In the 14th Army?

A No.

Q What were your duties?

A I was a staff officer in the parachute unit.

Q As a staff officer for the 14th Army on your first trip to the Philippines, what were your duties?

A Mainly in operations.

Q Were you familiar with the orders and directives that were issued by the 14th Army?

A Yes.

Q Were you also familiar with the policies as laid down by the 14th Army?

A The policy of the 14th Army was to secure peace and order in the Philippines.

Q Who was your commanding general when you first came to the Philippines?

A Lieutenant General Tanaka.

Q Who succeeded Lieutenant General Tanaka?

A Lieutenant General Kuroda.

Q At the time of your service under General Tanaka was General Kono under him?

A Yes.

Q At the time General Kuroda succeeded General Tanaka was General Kono also subordinate to General Kuroda?

A Yes.

Q Who was the chief of staff under General Tanaka?

A Lieutenant General Wati.

Q Who was the chief of staff under General Kuroda?

A At first it was Lieutenant General Wati; then later it was Lieutenant General Isayama.

Q As a former staff officer of the 14th Army are you in a position to testify as to certain orders issued by the 14th Army headquarters to General Kono's brigade concerning guerrilla operations in Panay? Answer that yes or no.

A Yes.

Q Do you know where those orders are at the present time?

A Probably they are burned.

Q Prior to surrender was it the policy of the Japanese Army to destroy what records they could?

A Generally that is the case.

LIEUTENANT MC CULLOUGH: If the Commission please, we submit, on the best-evidence rule, [illegible]oral testimony as the best evidence we can produce before this Commission as to the contents of these orders which were destroyed, according to the testimony of this witness.

CAPTAIN YARD: Has defense counsel made an effort to secure these orders from ATIS or some other branch of G-2 or from the Imperial Japanese Government or elsewhere.

LIEUTENANT MC CULLOUGH: We didn't make a specific request on ATIS for these orders. However, we did make a diligent search for orders of any kind pertaining to the Kono operations or orders which were issued to General Kono's command and were not able to find any of them.

CAPTAIN YARD: We won't object, then, to the testimony of the witness along this line.

COLONEL HAMBY: Proceed.

Q Do you recall the contents of operation orders issued by the 14th Army in June of 1943 and April of 1944?

A Yes.

Q What were the contents of those two orders?

A The first order to Kono's brigade pertained to the securing of peace and order in the Visaya Group, and especially on Panay Island. The order of April 1944 pertained to the securing of peace and order on both coasts of Guimaras Strait.

Q Did either or both of those orders refer to the capture of wireless equipment?

A Yes, on both of them.

Q As a former staff officer of the 14th Army, are you able to tell the form in which these two orders were set up?

A Yes, I remember.

Q Will you briefly, then, describe the form of these two orders?

A The first paragraph contained the situation of the enemy and friendly troops. The second paragraph contained the Army's operational objectives. The third paragraph contained the

mission of the unit. And as to the last paragraph, it contained matters pertaining to communication and line of communication.

Q Is that a standard form as laid down in the Japanese Manual of Combat issued by the Minister of War?

A Yes.

Q Was it the custom in the Japanese Army for commands of lower echelons to report their orders to the 14th Army headquarters?

A Yes.

Q Have you ever seen any of the operation orders issued by General Kono's headquarters that were sent to the 14th Army headquarters?

A Yes, I have seen them.

Q Do you recall paragraph 2 of these orders just referred to?

A Paragraph 2 of the orders of the Kono unit stated that the Kono unit is concerned with the restoration of peace and order, especially on Panay Island, and it referred to the capture of guerrilla leaders and the elimination of wireless sets.

Q How do you remember that?

A I remember it through my duties.

Q Do you remember whether it was the policy of the 14th Army at that time to have a similar contents in paragraph 2 of these operation orders as being the most effective method of restoring peace and order on the Visayan Islands?

A Yes.

Q Do you recall anything in these orders particularly relating to the treatment of the civilian population?

A Yes.

Q What was the gist of this paragraph?

A That paragraph pertained to the kind treatment to be extended to the residents of the Philippine Islands. It stated that it is necessary to have the Filipinos cooperate earnestly with the Japanese Army, and it also had a precaution to the effect that damages of combat and warfare must not be extended to the general populace.

Q Was this done for the purpose of military as well as political expediency?

A It was for both purposes.

Q How long have you been connected with the Japanese Army?

A About twenty years.

Q Did you attend any special schools or academies in your training?

A I went to the Military Academy and also to the War College.

Q Are you familiar with the method used in promoting officers in the Japanese Army?

A Yes, I am familiar with it.

Q Would you, then, tell briefly how that is done?

A A set period of time is established. The unit commander will report to the War Minister the names of any officer who has served that time. The War Minister, in turn, reports to the Emperor, and the officer is promoted in the name of the Emperor.

Q Did that work out in actual practice or was that only the theory underlying these promotions?

A It was actually practiced.

What do you mean by "in actual practice" and "by theory only"; I don't quite get the meaning?

Q I'll put it this way: Did the Personnel Bureau have more to say regarding the promotion of a Japanese officer than the unit commander himself?

A Yes.

Q In other words, were the promotions automatic as set up by the personnel bureau of the War Ministry?

A Yes, that is so.

LIEUTENANT MC CULLOUGH: Cross-examine.

CROSS-EXAMINATION

BY CAPTAIN YARD:

Q Would an officer be promoted without the recommendation of his unit commander?

A The unit commander will write his observation of the officer.

Q Could he be promoted without the recommendation of the unit commander?

A The unit commander will recommend an officer for promotion. However, the recommendation does not have much weight in the personnel department in the War Ministry.

Q But the unit commander has to make the recommendation, is that right?

A He is supposed to recommend.

Q If an officer failed to carry out the mission of 14th Army Headquarters, would he be promoted?

A I cannot say offhand.

Q If he deliberately disobeyed the operation orders of his particular unit, would he be promoted?

A No.

Q What was the reputation of General Kono in 14th Army Headquarters as a disciplinarian?

A General Kono was very strict as to military discipline.

Q Was this in 1943 and while you were in Manila in 1944?

A Yes.

Q Did 14th Army Headquarters ever order General Kono to mistreat the civilians on Panay Island?

A No.

Q Did 14th Army Headquarters ever direct General Kono or those under his command to kill civilians on Panay Island?

A Absolutely not.

Q Did General Kono or those under his command ever report to 14th Army Headquarters that civilians had been killed on Panay Island in 1943 or 1944?

A No.

Q Was any type of military trials held on Panay Island in 1943 or 1944?

A No.

CAPTAIN YARD: No further questions.

LIEUTENANT MC CULLOUGH: No further questions.

EXAMINATION BY THE COMMISSION

BY CAPTAIN ELLINGSON:

Q What disposition of captured guerrillas did 14th Army Headquarters direct its subordinate units to make?

A Try them by military tribunal to determine their guilt or innocence.

Q Were any guerrillas ever tried in the Visayan Group?

A Do you mean were they tried in Visaya?

Q In Visaya or any other place. Were any guerrillas captured in the Visayan Islands tried at any place?

A I do not know.

BY COLONEL CHASE:

Q Was General Kono's reputation that of an officer who would know what was going on within his command?

A I have never heard of that reputation.

Q Did you not recently testify that he was a strict disciplinarian?

A Yes, that is so.

Q Then, if you did not know his reputation how could you so testify?

A I have heard that he is very strict as to military discipline. And I have also seen a memo from the Kono headquarters which contained notes taken during unit commanders' meeting of the Kono Unit, so that is why I know that he is strict as to military discipline.

Q Did you not testify this morning in response to a question by the defense counsel that you knew General Kono's reputation?

A I did not testify this morning as to general reputation. I was asked the question, if General Kono was strict in military discipline.

Q No, earlier than that. In response to a question by the defense counsel, did you not state that you knew General Kono's reputation under the 14th Army Command?

A I don't think the word "reputation" was used; it was about military discipline.

BY COLONEL GOFF:

Q With what force did you surrender?

A The parachute unit at Clark Field.

Q Were you then under the command of Major General Tsukada?

A Yes.

Q Did your force in the hills, Zambales Mountains, have any Filipinos with them?

A Not in the mountains; there were no Filipinos in the mountains.

Q Before you went to the mountains did your force send Filipinos to the mountains on work parties?

A No, we did not.

BY COLONEL HAMBY:

Q If there were civilians killed on Panay Island during 1943 and 1944, who would be held responsible for these acts by the Japanese High Command?

A We would make the one who did the killing the responsible party.

Q If that person that did the killing was in the military service, what would happen to him?

A If he killed an innocent person with no reason, he would be brought up for court-martial.

Q Was not General Kono then in supreme command down on Panay Island?

A General Kono was assigned the islands of Panay, Cebu, and Negros.

Q Would not, then, this guilty party be subject to discipline by General Kono?

A The court-martial is set up by the Army. The Kono Unit does not have any court-martial system. Therefore, the commanding officer of the Army would set up the court-martial and the person would be punished.

COLONEL HAMBY: Questions by the prosecution?

CAPTAIN YARD: Nothing else, sir.

LIEUTENANT MC CULLOUGH: Nothing further, sir.

COLONEL CHASE: One more question, sir.

BY COLONEL CHASE:

Q War it the practice in the Japanese Army to promote from Major General to Lieutenant General officers who had a reputation for not knowing what went on within their commands?

A The Minister of War is the one who decides promotions. If the Minister of War knew such a thing he would not promote the officer.

COLONEL HAMBY: Further questions by the defense?

LIEUTENANT MC CULLOUGH: Nothing further, sir.

CAPTAIN YARD: Nothing further, sir.

COLONEL HAMBY: The witness may be excused.

(Witness excused.)

LIEUTENANT MC CULLOUGH: If the Commission please, as this witness is a Japanese national who was brought down here from Japan, if the Commission or the prosecution does not have any further use for him I would like to have him excused for the duration of the trial.

COLONEL HAMBY: The Commission does not.

CAPTAIN YARD: The prosecution does not, either, sir.

COLONEL HAMBY: You may excuse him.

The Commission will take a short recess.

(Short recess.)

COLONEL HAMBY: The Commission is now in session.

SATOSHI WADA

a witness for the defense, was duly sworn and testified as follows through Interpreters Kato and Ogita:

DIRECT EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Will you state your name, please.

A Satoshi Wada.

Q Where do you live?

A In Kagoshima Prefecture, Japan.

Q What is your present occupation?

A I am retired.

Q What is your status at the present time?

A I am a Japanese citizen.

Q Are you known as a Japanese national?

INTERPRETER OGITA: It is the same thing in Japanese.

Q Were you formerly an officer in the Imperial Japanese Army?

A Yes.

Q What was your rank?

A Colonel.

Q Did you ever serve in the Philippine Islands?

A Yes.

Q Between what dates?

A From May 30, 1944,until the end of the war, August 31, 1945.

Q Where did you serve?

A From May 30 until June 21 I was staff officer in the headquarters of the Independent 31st Mixed Brigade. From June 21 I was the Chief of Staff in the headquarters of the 102nd Division until the end of the war.

Q Was the 31st Independent Mixed Brigade also known as the Kono Unit?

A Yes.

Q Then, you served under General Takeshi Kono, is that right?

A Yes.

Q During what dates?

A From May 30 until June 21.

Q Of what year?

A 1944.

Q What was your first assignment upon coming to the Philippine Islands.

A I was a staff officer in the Mixed Brigade but I came to prepare the new organization of the 102nd Division.

Q Did that also include the activation of the subordinate or component units of the 102nd Division?

A That includes the headquarters of the Division and the subordinate headquarters and all units.

Q Did you know Captain Kengo Watanabe?

A Yes, I know him.

Q How well did you know him?

A When I came to the Philippines I first met him.

Q Did you know of his being appointed Brigade Adjutant to General Kono one time?

A Yes.

Q Are you familiar with the circumstances leading up to that appointment?

A I was the head or the one who organized, so I know the situation well.

Q Did the activation of the 102nd Division also include the 77th and 78th Brigade which made up the Division?

A Yes, they were included.

Q Was the 77th Brigade also known as the Kono Brigade?

A Yes.

Q Was Captain Kengo Watanabe made adjutant of the 77th Brigade?

A Yes.

Q Do you know the circumstances under which he was made adjutant of that brigade?

A Yes.

Q Would you explain to the Commission the circumstances under which that was done?

A In activating the 102nd Division we received many units. However, in organizing the headquarters of the Division, we were given only one divisional commander, one brigade commander, and one chief of staff. Consequently, the headquarters of the Independent Mixed Brigade of General Kono was used to organize the headquarters of this new division; and the personnel for the two brigade headquarters of the 77th and 78th were picked from various units. For the ranking adjutant of the brigade we desired at least an officer with a major's rank. However, we could not get such a person. We were barely able to appoint two captains, and one of them was Captain Watanabe.

Q Are you, then, familiar with the promotion of Captain Kengo Watanabe from the rank of a captain to the rank of a major?

A Yes.

Q Was this, then, a routine promotion made by the personnel bureau of the Ministry of War?

A Yes. In fact his promotion was a little later than other people.

Q Would you say, then, that his promotion was held up for one term?

A That matter is something that happened before I came there so I do not know, but I believe it is a matter of the person's ability and efficiency. I think this promotion was simply a matter of time, of his serving the time.

Q Do I understand you correctly that after the Japanese Army officer served a certain length of time in the army his promotion is automatic?

A Yes, they are promoted as long as there is no special circumstance.

Q Then, you were compelled to appoint Kengo Watanabe as adjutant?

A There was no other person.

Q Did General Kono have anything to do with his appointment as adjutant?

A No, he had no connection with it. I was the head of the committee preparing the organizational chart and I have shown it to him after it was completed.

Q Did General Kono have anything to do with the promotion of Kengo Watanabe from captain to major?

A I do not remember when the document for promotion was sent out so I do not know about his connection there.

Q At the time these promotion papers, or appointment , were being processed did you know of any of the atrocities with which he is charged as a war criminal, referring to Captain Kengo Watanabe?

CAPTAIN YARD: He is not under charges, Lieutenant McCullough.

COLONEL HAMBY: Withdraw the question and reframe it.

LIEUTENANT MC CULLOUGH: I withdraw the question.

Q At the time these promotion papers were being processed for appointment to the rank of a major, did you have any knowledge as a staff officer that Captain Kengo Watanabe had committed any violation of the laws of war?

A I did not know anything about it at the time.

Q Would the same answer apply to his appointment as adjutant?

A Yes; I did not hear anything about it at the time. All I heard was that he was very serious with his work. I have only met him only two or three times.

Q Do you know whether or not General Kono had any knowledge that Captain Watanabe, later Major Watanabe, had committed any violations of the laws of war?

CAPTAIN YARD: Just a moment. We do object to this question. It has been stated that General Kono was going to take the stand, and as to things within his knowledge I believe he is possibly the best person to so testify.

LIEUTENANT MC CULLOUGH: We will admit that General Kono is the person having the best knowledge of that. However, this man may have collateral knowledge of the same thing, being the staff officer in these various

units which he has testified about, and if he does have such knowledge we feel the Commission should have those facts.

COLONEL HAMBY: Objection overruled.

A I don't think he knew about the matter. Even myself, the staff officer, did not hear anything about it, so the commander of the brigade would naturally have no knowledge of it.

CROSS EXAMINATION

BY CAPTAIN YARD:

Q Did you know Lieutenant Colonel Ryoichi Tozuka?

A Yes, I know him.

Q Kengo Watanabe was in his unit before coming to the 102nd Division Headquarters, is that right?

A Not the 102nd Division Headquarters, but until the time he came to the 77th Brigade Headquarters he was in the Tozuka Unit.

Q Did you talk with Colonel Tozuka about Watanabe?

A No, I have never spoken to him.

Q Then you selected the headquarters for the new division without discussing the personnel with any of the former commanders of the personnel?

A In organizing the personnel of the headquarters, if I were to talk to each unit commander I cannot make a fair appointment as the head of the committee. However, on special occasion I would talk with the unit commanders. Since everything in every unit was to be moved around, I did not talk to the commanders of each unit about every man. Furthermore, the organization was done in Cebu and Lieutenant Colonel Tozuka was in Iloilo, so I did not talk to him.

Q Did you have the individual service record of the persons whom you appointed to the headquarters?

A In the Japanese Army the officers have a thing which is called an efficiency chart. I have seen their efficiency chart but I had no other record.

Q What was the efficiency rating, if you recall, of Kengo Watanabe?

A I saw many so I do not remember.

Q Do you recall whether or not you selected any persons for the headquarters whose efficiency rating was poor?

A No, I cannot say anything about poor efficiency. For instance, in the delay of promotions, that does not necessarily mean that the person had a poor efficiency rating. He may have been on the bottom of the list which contains the order of promotions.

Q Did you know whether or not Kengo Watanabe had been disciplined by his commanding officer?

A I do not remember.

Q Were you told that he had been disciplined by his commanding officer or recommended for court-martial or disciplinary action by his commanding officer or General Kono?

A No.

Q Did you know Lieutenant Colonel Hidemi Watanabe?

A Yes.

Q Did he become a member of the headquarters of the 102nd Division?

A Yes, he was there as senior staff officer.

Q What was his reputation as an officer?

A I believe he is a great man. He was very well liked by the men in headquarters. Of all the colleagues with whom I have come into contact so far, I believe he is one man whom I have great pleasure in dealing with.

CAPTAIN YARD: No further questions.

REDIRECT EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Did the tactical situation at the time make any difference in the persons whom you placed in the new units which you were activating?

A The whole Pacific situation influenced the activation. We were not able to get many men from Japan to replenish personnel. Before I came to the Philippines I was a staff officer in a division in Japan. I am very familiar with the manpower shortage.

Q Did you have a time limit set on the activation of these units?

A Yes, the time was very limited. After coming to the Philippines in three weeks I was supposed to organize. The 31st Independent Mixed Brigade, which was to be the main body of the new organization, was deployed on many islands and they were always on expeditions. Therefore, I could not look into every minute detail.

Q At that time was a counter-invasion expected?

A Looking at the whole Pacific situation, I judged that the American invasion of the Philippine Islands was very imminent.

Q Knowing General Kono as you did, would you say that he was a strict disciplinarian?

A Looking at the situation of the conditions of the Independent Mixed Brigade, and after this brigade was organized into the division, I could see that the military discipline was well maintained by General Kono. I was especially happy to see that the function of the headquarters of the Mixed Brigade was going along harmoniously.

This is to General Kono's credit: For example, at the time the division was being activated an ordinary person would demand things for his own benefit or for his own troops. However, General Kono did not do this. He would not demand things for his own benefit, which proved that the men under his command were attached to him.

Q Do you know whether or not General Kono's reputation was that of a strict disciplinarian while he was instructor at the Toyama Academy?

A When I was a second lieutenant I was a student at the Toyama school. From that time on I have always heard about General Kono and I know that he was a strict disciplinarian.

Q All right. Now, do you think that because General Kono was such a strict disciplinarian that certain of his subordinate officers in his unit were afraid to report any atrocities or violation of laws of war to him?

CAPTAIN YARD: Now, just a moment, please. I object to that question.

LIEUTENANT MC CULLOUGH: On what ground?

CAPTAIN YARD: It calls for an assumption of knowledge without any background as to the basis of an opinion from the witness, how he would know such a thing. He only came over here in May, 1944, and it is just clear out of the realm of probability.

LIEUTENANT MC CULLOUGH: If the Commission please, we submit that this witness was a student as an officer candidate in the Toyama Academy under General Kono --

CAPTAIN YARD: I'm sorry. I'll withdraw the objection.

COLONEL HAMBY: Will the reporter read the question, please.

(The last question was read by the reporter.)

A I would not especially say that they were afraid. As a result of the war in East Asia, many officers were used in the lines. Consequently, the level of the officers' qualities went down, and I would not say that they were afraid to report any such acts, but that they were ignorant.

As an example of the low quality of officers, I will cite the case of 102nd Division. The divisional commander, the brigade commander, the chief of staff, and the commanding officer of one independent infantry battalion were the only ones who were graduates of the Military Academy. The rest of the officers were all candidates for reserve commission.

LIEUTENANT MC CULLOUGH: Sir, that is all on redirect.

EXAMINATION BY THE COMMISSION

BY COLONEL CHASE:

Q You testified in connection with the organization and command relationships of the 102nd Division, "I was familiar with the situation." Is that correct?

A Do you mean the situation of the organization activation?

Q Did you testify with regard to the organization and command relationships within the 102nd Division and 77th Brigade, "I was familiar with the situation"?

A I believe the question was, "Was I familiar with the situation of the organization?"

Q You have testified that you were familiar with the reputation of Lieutenant Colonel Watanabe, a member of General Kono's staff; is that correct?

A Yes.

Q You have also testified that General Kono was known as a strict disciplinarian; that he had a good brigade, was of good character, and that his men were attached to him.

A Yes.

Q You stated that your knowledge of him was based on your experience with him and what you had heard of him since you first knew him when you were a 2nd lieutenant and he was your instructor, is that correct?

A The first part of that is correct, but he was not directly my instructor. When I was at the school General Kono's reputation was known because he was the best fencer in the Japanese Army.

Q Was General Kono's reputation that of an officer who would not know what was going on within his command?

A I have not heard any special reputation as to that matter. However, as a brigade commander, he was one who was always striving to make an extensive observation of his subordinates.

Q You have testified as to your very high opinion of Lieutenant Colonel Watanabe, a member of General Kono's staff.

A Yes.

Q Is it your opinion that Lieutenant Colonel Watanabe would deliberately conceal from General Kono, over a long period, repeated and flagrant violations of his orders?

A I believe he is not that type of a person.

COLONEL HAMBY: Any further questions by the Commission?

BY CAPTAIN ELLINGSON:

Q Did Captain Watanabe have any duties in the Kono headquarters other than those normally performed by an adjutant?

A I do not know.

Q Who was the Intelligence officer or G-2 of the Kono headquarters at the time Captain Watanabe was the adjutant?

A There is no Intelligence Department in that headquarters. However, the general will appoint an appropriate officer who is attached to the headquarters to take charge of Intelligence. But I do not know who that person is. In the headquarters the adjutant is the only one who is assigned that position. However, the other officers are all attached

to the headquarters.

COLONEL HAMBY: Has the defense anything further?

LIEUTENANT MC CULLOUGH: Nothing further from this witness.

COLONEL HAMBY: Prosecution anything?

CAPTAIN YARD: No, sir.

LIEUTENANT MC CULLOUGH: This witness, a Japanese national, was called down to testify in this case. We ask at this time that he be excused so that he may be returned to Japan. I ask if there is any objection by either the Commission or the prosecution.

CAPTAIN YARD: Prosecution has no objection.

COLONEL HAMBY: The Commission has no objections. He may be returned to Japan.

LIEUTENANT MC CULLOUGH: The defense called as its third witness this morning a man by the name of Nakamura, who is at present in the stockade at LUPOW. There was a mix-up and they brought in the wrong Nakamura. These two Nakamuras have identical first and last names. Therefore, we are not prepared at this time to go forward with the defense of this case and ask that the Commission recess until Monday morning at 0830.

CAPTAIN YARD: Prosecution has nothing further.

COLONEL HAMBY: The Commission will recess until Monday morning at 0830.

(The Commission adjourned at 1100 hours, 27 April 1946.)

(205J)

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Armed Forces
Western Pacific

UNITED STATES OF AMERICA	
vs	PUBLIC TRIAL
TAKESHI KONO	

VOLUME X

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MANILA, P. I.

DATE: 29 April 1946

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Lieutenant

CERTIFICATION

This certifies that this volume is a part of the proceedings of the Military Commission appointed by Paragraph 21, Special Orders No. 85, Headquarters, United States Army Forces, Western Pacific, dated 12 April 1946, in the trial of the case of the United States of America v. Takeshi Kono.

Dated 7 May 1946

W. R. Hamby

WILLIAM R. HAMBY
Colonel, CAV
President of Commission

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Armed Forces
Western Pacific

UNITED STATES OF AMERICA)
)
vs) PUBLIC TRIAL
)
TAKESHI KONO)
- - - - - - - - - - - - - - -)

Court No. 2-B
High Commissioner's Residence
Manila, P. I.
29 April 1946

Met, pursuant to adjournment, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL WILLIAM R. HAMBY, CAV, President and Law Member
COLONEL JOHN L. GOFF, CAC
COLONEL JOSEPH H. WARREN, INF
LIEUTENANT COLONEL JOHN A. CHASE, (CMP) FA
CAPTAIN JACK ELLINGSON, CMP

APPEARANCES:

FOR THE PROSECUTION:

(AS PREVIOUSLY NOTED.)

FOR THE DEFENSE:

(AS PREVIOUSLY NOTED.)

INTERPRETERS FOR THE COMMISSION:

(AS PREVIOUSLY NOTED.)

REPORTERS FOR THE COMMISSION:

ARNOLD COHEN
WILLIAM COHEN

I N D E X

WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS	EXAM. BY COMM.
TAKESHI KONO	796	824	833	835	

P R O C E E D I N G S

The Commission convened, pursuant to adjournment, at 0830 hours, 29 April 1946, at Courtroom No. 2-B, High Commissioner's Residence, Manila, P.I.

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: Sir, may the record show that all members of the Commission are present, accused together with his defense counsel and personal interpreter, and members of the prosecution, are present.

LIEUTENANT MC CULLOUGH. Sir, the defense at this time is ready to proceed with the trial of the case and calls as its next witness Lieutenant General Takeshi Kono.

TAKESHI KONO

the accused, a witness in his own behalf, was duly sworn and testified as follows through Interpreters Ushijima and Ogita:

DIRECT EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Will you state your name, please.

A Takeshi Kono.

Q How old are you?

A Fifty-five years old.

Q Where is your home in Japan?

A Tokyo.

Q Prior to surrender were you a member of the Japanese Imperial Armed Forces?

A Yes.

Q When did you surrender?

A August 30, 1945.

Q Prior to surrender did you come to the Philippine Islands?

A Yes.

Q To what place in the Philippine Islands were you sent?

A On May 5, 1943, I came to Manila and on the 7th of May I went to Cebu.

Q After you went to Cebu were you the commanding officer of the Visayan Island Group, with particular reference to the Islands of Panay, Guimaras and Tablas?

A Yes.

Q Prior to coming to the Philippines where were you stationed?

A I was stationed in Kannei, which is south of Hankow in Central China.

Q Prior to that where were you?

A Prior to that I was at a place called Suinan on the eastern border of Manchuria.

Q While you were in Manchuria what was your position or duties?

A I was stationed on the eastern border of Manchuria and my mission was the training of troops for security of the border.

Q Were you a regimental commander at that time?

A Yes.

Q Between what dates?

A From December of 1938 until August of 1941.

Q Were you a brigade commander in Central China?

A Yes.

Q And between what dates?

A From September of 1941 until the time I came to Manila.

Q Prior to going to Central China where were you stationed?

A At Suihua in Manchuria.

Q Where were you prior to going to the Manchurian frontier?

A I was at the Toyama Academy, which is an army gymnastic school in Tokyo.

Q What was your assignment at that school?

A I was an instructor in gymnastics.

Q How long were you at that institution?

A Altogether about twenty years.

Q How many years altogether have you served as the commanding officer of a combat unit?

A Approximately six years.

Q Now, is that prior to coming to the Philippine Islands?

A Yes.

Q After you went to Iloilo or to Cebu after you first left Manila, what was your assignment?

INTERPRETER OGITA: After Cebu or --

Q What was your assignment after May 7, 1943?

A As the commanding officer of the 11th Independent Defense Unit my mission was to secure peace and order in the Visayan area.

Q Where were your headquarters?

A It was in Cebu.

Q Then did you later become the commanding officer of the 31st Independent Mixed Brigade?

A Yes.

Q When was that?

A I took office on 22d of November 1943.

Q When the 102d Division was activated did you become the commanding officer of the 77th Brigade?

A Yes.

Q During what dates?

A From July 10, 1944.

Q Were you in the Philippine Islands at the time of surrender?

A Yes.

Q What was the chain of command over you while you were in command of the Visayan Island Group?

A The chain of command was very complicated. When I first came here, that is between May and June of 1943, Lieutenant General Tanaka, the commanding officer of the 14th Army, was my superior officer. From June 1943 until July 10, 1944, my immediate superior officer was Lieutenant General Kuroda; from July 10 the chain of command ran from Kuroda, Suzuki, Fukuei, and to Kono; in October 1944 the chain of command ran from Yamashita, Suzuki, Fukuei, and then to Kono; from November of 1944 until the beginning of January 1945 it was from Yamashita, Suzuki, then to Kono; from January 1945 until the time of surrender the chain of command was from Yamashita to Suzuki to Fukuei, and then to Kono.

Q What was the geographical limits of your command of these different dates?

A In the first period until around October of 1943, I was in command of all the Visayas. After October 1943, Leyte and Samar were taken out of my command. After July 10, 1944, I was in command of the western half of Negros Island and Panay Island.

Q After October 1943 were you also in command of Bohol and Cebu, or parts of it?

A Yes.

Q Between what dates did you have command over the Island of Panay?

A From the time I first came here until the time of surrender.

Q Was Lieutenant Colonel Tozuka one of your subordinate officers on the Island of Panay?

A Yes.

Q Was Captain, later Major, Kengo Watanabe under your command on Panay?

A Yes.

Q Was Lieutenant Colonel Hidemi Watanabe one of your officers?

A He was my only staff officer.

Q What were Colonel Watanabe's duties?

A His mission was to assist me. His mission was to facilitate my duties.

Q Was he a staff officer all during that time?

A No. From May 13, 1943 until July 9, 1944, he was my staff officer. From July 10, 1944, he became a staff officer of the 102d Division. Then, from around the end of October 1944 until the time of surrender, although he was still the staff officer of the 102d Division, he was on detached service to my unit.

Q Did Colonel Watanabe ever have any command functions over your troops at any time that he was under your command?

A A staff officer does not have the authority to command troops. Therefore, he has never commanded any troops.

Q Did Colonel Watanabe ever lead any punitive expeditions against the guerrillas at any time while he was under your command on Panay Island?

A No.

Q Did Colonel Watanabe ever take part in any expeditions against the guerrillas at any time?

A No.

Q Is that also true as to his activities on Guimaras Island?

A I do not know of any action taken by Colonel Watanabe on Guimaras Island.

Q Did you make a trip to Guimaras Island in August of 1943?

A On August 26, 1943, I visited Buenavista on Guimaras Island to observe the situation of the Public Relations Section and approximately three hours later I came back.

Q Was Colonel Watanabe with you on that trip?

A Colonel Watanabe accompanied me.

Q Were you sent there by the 14th Army?

A No. There was a necessity of my observing the situation of the Public Relations Section because of my duties, so I just went there.

Q Did you order any operations or expeditions against the guerrillas on Panay Island about July 1943 and again about April of 1944?

A I issued an operational order and had operations started.

Q Were those operational orders issued as a result of orders which you received yourself from the 14th Army headquarters?

A Yes. I acted according to the orders of the Army.

Q What orders, then, did you issue to your subordinate units?

A At the time I took office I issued the standing order. This pertained to the matters which were most important in carrying out my mission. That was the capture of guerrilla leaders and the destruction of communication facilities.

Aside from this original standing order, every time I issued an order I also stated this as my main objective.

The second matter was to treat kindly and sympathize and love the civilian residents.

Q What combat orders did you issue to your subordinate units, or what operation orders did you issue to your subordinate units?

A In the second paragraph of the operational orders the main objective of our army was stated. This was the capture of guerrilla leaders and the capture or destruction of enemy wireless. I always used the same matter for the same paragraph.

Q Did you ever order the killing of any noncombatant civilians on Panay Island?

A I have never issued any orders of killings.

Q Did you ever order the brutal treatment of any noncombatant civilians on Panay Island?

A (Continued) On the contrary, I have issued orders to treat them kindly.

I have never ordered any such order.

Q Did you take any precautionary measures to prevent the killing or brutal treatment of any of the civilian population?

A First of all, I had this standing order, which was to capture guerrilla leaders and capture and destroy wireless sets, and to love and treat kindly the civilian residents.

Second, on the numerous operational orders which I have issued, I always stressed and made clear the objective, and always in one of the paragraphs was a matter pertaining to the kind treatment of the civilians.

Third, various unit commanders come frequently to make a report. Each time they report I always refer to this matter, that is, about the treatment of civilians.

Fourth, in inspecting the various units, I myself personally always gave precautions to the lowest ranking leaders, for instance, even to corporals, that is, about the treatment of civilians.

Fifth, each time a new personnel or reinforcement is attached to a unit I always gave them these precautions.

Aside from this, I placed a restriction on combat actions. I did not allow any aerial bombardment or artillery shelling. This came about from my fear of harming or damaging the noncombatant civilians. I also issued precautions, a warning, that the soldiers must not burn the homes of any residents.

I had liaison with the various Philippine administration officials. This was because I wanted to know any damage inflicted upon the residents. For this purpose the Public Relations Section was to be extremely active.

Q Why do you place such importance on paragraph 2 of your operation orders?

A I placed much emphasis upon the second paragraph of the operational order because this was the basis of controlling the troops. The second paragraph indicated the main objective. This objective was made extremely clear so that no doubt would be made as to the meaning. This was the reason that I was so strict with the second paragraph.

Q Was the same thing true with that paragraph relating to the treatment of noncombatant civilians?

A Yes, it could be said the same way.

Q What was one of the reasons that you moved your command headquarters to Iloilo City from Cebu?

A The headquarters was moved from Cebu to Iloilo because our communication facilities were very poor. We moved to Iloilo to facilitate the command of troops and also to supervise the troops.

Q Did you ever make any field inspections during these operations?

A I made the inspections as much as possible.

Q Did you ever call any of your subordinate commanders back to your headquarters during these campaigns or expeditions?

A Around August 21 or 22 of 1943 I called back various unit commanders from the combat areas. The purpose of this meeting was that since this was my initial operation in the Philippine Islands I wanted to know what the operational situation of each unit commander was. I could not personally go or send my only staff officer to the field to inspect the troops, so that is the reason I called the unit commanders to the headquarters.

COLONEL HAMBY: At this time the Commission will take a short recess.

(Short recess.)

COLONEL HAMBY: The Commission is now in session.

LIEUTENANT MC CULLOUGH: Will the interpreters remind the witness that he is still under oath.

(Interpreter Ushijima translated to the witness.)

BY LIEUTENANT MC CULLOUGH:

Q Is there any system in the Japanese Army corresponding to the Inspector General's Division in the American Army?

A No.

Q Do you have any way of finding out about atrocities which have been committed unless your subordinate commander or the civil officials report them to you?

A I could not find out, unless they report it.

LIEUTENANT MC CULLOUGH: Would you check your translation there again to determine whether or not it was, "I don't know if they don't report it"?

THE WITNESS: Unless they report it, I would not know anything.

Q At any time while you were in command of Panay did you receive any reports from any source about the atrocities with which you are charged in this trial?

A No.

Q Did you ever receive any reports from any of your subordinates regarding the atrocities with which you are presently charged?

A I have never received any reports concerning atrocities from my subordinates.

Q Did you ever receive any complaints from any of the local officials in the Visayan Island Group regarding any atrocities that were committed by your subordinates?

A No.

Q Do you know Dr. Fermin Caram, former governor of Iloilo?

A I have met him.

Q Was he the governor of Iloilo during the occupation?

A Yes, he was there.

Q How many times did you have meetings or conferences with Dr. Caram?

A I believe around ten times.

Q What was the occasion of these meetings?

A I once met him on July 2, 1943, when I took command on Iloilo, and he came to pay his respects. And then on August 16 or 17 I met him again. This was a period when rice was being marketed and he complained that the guerrillas were hindering transportation of rice, and he came to ask me to have this situation remedied.

Q How many formal calls did Dr. Caram make upon you?

A As I just said, two times.

Q Were all of the other meetings or conversations between you other than those two times, then, purely social?

A Yes.

Q On these formal calls what conversation took place on the first meeting?

A Since it was the first time that I met him I told him that I was the commanding officer of Visaya. I thanked him for his tireless efforts in the administration of the Filipinos, and I further asked him for his cooperation in the establishment of peace and order in the area.

Q What conversation took place between you and Governor Caram during the formal calls he made upon you in August of 1943?

A At this time rice was ripening and ready to harvest. He said that the guerrillas were obstructing the harvesting and desired the situation to be remedied. I gave orders to my subordinates with this in mind. That area where rice was being produced included Oton, San Miguel, Santa Barbara, Janiuay, Leganes, Pavia.

I asked him if he had any other desire or wish. He said that the mayor told him that a farmer's carabao was confiscated by the Army. I ordered my subordinate units to punish the guilty one, and I also ordered rice be given for reparations in place of money.

Q Did Governor Caram report any atrocities to you in either of these meetings?

A Besides the conversation which I mentioned, I did not hear anything else.

Q What took place at the eight other meetings that you have told about?

A I called upon him and he called upon me. I called upon him during the celebration for the independence of the Philippines. The following day he invited me to his home. On another occasion, one night I was walking through the town of Iloilo with my subordinates and I saw him at a dance hall and met him there. Then around the end of August, when I went to Buenavista to inspect the Public Relations Section, he accompanied me. When I was introduced to Mayor Ybernas, Police Chief Tando, I met the

governor at the place where I was introduced.

Q During any of these meetings did either Governor Caram or any other person tell you of any atrocities?

A I heard nothing about atrocities.

Q Did you ever make any inspection trips with Dr. Caram?

A When I went to Buenavista to inspect Public Relations Section's situation, he accompanied me.

Q On that inspection trip were any atrocities reported to you from any source?

A I did not receive any reports.

Q Did you ever issue any orders or instructions to your subordinates to use brutal methods in extracting information?

A I have never ordered my subordinates to use brutal methods.

Q Did you ever receive any information that your subordinates were using brutal methods in order to get information?

A I have never heard.

Q Did you ever issue any orders or instructions to any of your subordinates to kill any noncombatants without a trial?

A Absolutely none.

Q Did you ever receive any reports or information that any of your subordinates were killing people without giving them a trial?

A I have never heard of any such thing.

Q Did you ever issue any orders directing the killing of guerrillas without a trial?

A Absolutely not.

Q Does that same answer apply to guerrilla suspects?

A Yes.

Q Did you ever receive any reports or information that guerrilla suspects were being executed without trial by members of your command?

A I have never received any reports or information about such things.

Q Did you ever issue any order directing the killing of any American missionaries?

A Absolutely not.

Q Were you ever in or near Camp Hopevale, Capiz Province, during the month of December, 1943?

A No, I was in Cebu at the time.

Q When did you go to Cebu?

A I went there the first of December.

Q At that time were your headquarters in Cebu?

A In December the headquarters were in Cebu, and from then on, also.

Q Did you receive any reports from Colonel Watanabe about the killing of American missionaries at Camp Hopevale during December 1943?

A I did not hear any such thing.

Q Did you receive any reports from Colonel Tozuka regarding the killing of the missionaries?

A No.

Q Or from Captain, later Major, Kengo Watanabe?

A No.

Q Or from any other source at that time?

A At that time I did not hear it from anyone.

Q When did you first hear of this incident?

A Immediately after the surrender I became ill and was hospitalized in Bacolod. I believe that was the 31st of August 1945. An A.P. news reporter, bespectacled, and about twenty-four or twenty-five years old, told me about this. This was the first time I heard of this incident.

Q Did you hear or read about any Americans being killed on Panay?

A In the intelligence report that comes out semi-annually I read that Americans were included in the guerrilla losses.

COLONEL HAMBY: At this time the Commission will take a short recess.

(Short recess.)

COLONEL HAMBY: The Commission is now in session.

LIEUTENANT MC CULLOUGH: Will the interpreters again remind the General that he is still under oath.

(Interpreter Ushijima translated to the witness.)

Q These reports that you have referred to, were they summaries or battle reports from all units operating in your area listing casualties?

A Yes.

Q In that tabulation was there any mention made of Camp Hopevale or the American missionaries?

A No.

Q Were there quite a few Americans serving with the guerrillas on Panay at that time?

A I have heard that Americans were in the guerrilla units at that time.

Q Did you hold any trials of guerrilla suspects on the Island of Panay?

A No, I have never had trials.

Q Why?

A The trials for these people were usually sent to the military tribunal in the Army headquarters in Manila and we had no authority to try them.

Q Did you make any request to the 14th Army regarding this matter?

A I have frequently reported by document to the Army headquarters about the true situation and I have requested the authority to hold military tribunal. I went to Manila two times for unit commanders' meetings, and at both of these meetings I have requested to the commander of the Army that I could hold military tribunal.

Q What was the outcome of your request?

A If the military tribunals should be held by these small units, the Army system will have to be radically changed; so my views were not accepted and the Army came to this conclusion after they made an extensive study. So I asked them, what should we do with the suspects? And I asked, should we take a policy of releasing these suspects? The Army accepted this idea and so consequently this policy was followed.

So therefore I followed this policy.

Q You mean you followed a policy of releasing these guerrilla suspects?

A Yes.

Q Did the Army say anything about sending the leaders to Manila for trial?

A Among the guerrilla suspects there was a necessity for putting the guerrilla chiefs in the military tribunals, so there was a policy to send them to Manila.

Q Did you send anyone to Manila for trial?

A Regrettably we did not catch any guerrilla chiefs so I did not send anyone. Once there was an incident in Cebu. We captured a Lieutenant Colonel by the name of Jacosalem. He was in the Southern Command. We prepared to send him to the military tribunal in Manila. However, I felt it was more advantageous to use him in our plan for securing peace and order. I related this view to the Army headquarters and consequently I received approval. We offered him a position. He was a dentist and there is a rumor that he is presently in Manila.

Q In the Japanese Army is there any provision made for courts-martial or military tribunals in either a regiment, brigade or a battalion?

A They are not held in those organizations.

Q Did you have any indoctrination centers for captured guerrillas similar to those described by Colonel Yamaguchi?

A Because we were taking this policy of releasing the suspects, suspects who relatively had little to do with the activity were released immediately. However, it was necessary to establish an education center in each battalion where suspects who need indoctrination were sent.

Q How many of these suspects were released on Panay?

A As I remember it, I believe it was over one thousand.

Q I believe you said that you did not have court-martial jurisdiction in your brigade. How were the Japanese officers or soldiers who committed crimes punished?

A In punishing men who have committed crime there are two systems: one is the punishment meted out to minor offenders, and the other is the punishment for serious crimes.

Q On those minor crimes did the Army use disciplinary punishment?

A Yes.

Q What is the effect of disciplinary punishment upon the Japanese soldier?

A I think the national characteristic has a great influence in the effect. A Japanese soldier who receives a light punishment such as a reprimand feels a great dishonor in receiving such punishment.

Q What about the effect of a judicial sentence to a Japanese soldier?

A As I have said before, a Japanese soldier feels great shame in receiving even a light punishment. Therefore, in case he receives a judicial sentence he not only loses social position but even his relatives and neighbors will feel antagonistic toward him. Therefore, such punishment has a great effect on a Japanese soldier.

Q Were there any military trials or courts-martial held for Japanese soldiers in your command?

A As I can remember, there were at least three cases.

Q What were they?

A One case was violence against the superior officer. I cannot remember the exact circumstances of the other two.

Q When did you first go to Iloilo?

A The 30th of June, 1943.

Q When did your first operation begin in Iloilo, or on the Island of Panay?

A From around the 8th of July, 1943.

Q Were the troops under your command all in Iloilo City at that time or were they scattered over the Islands?

A They were scattered all over.

Q Had you known Lieutenant Colonel Tozuka prior to that time?

A I did not know him before that time.

Q When did he come to the Island of Panay?

A I believe it was around January of 1943, but this was before I took office so I do not know.

Q Was Liuetenant Colonel Hidemi Watanabe new to the Philippine Islands; did he recently arrive?

A Lieutenant Colonel Hidemi Watanabe first came to Cebu May 13, 1943.

Q Do you know whether or not he ever had any experience prior to that regarding guerrilla operations?

A Lieutenant Colonel Hidemi Watanabe was serving in the personnel department of the War Ministry, so he had no connection with guerrilla warfare.

Q When was the first time you met Captain Kengo Watanabe?

A I first learned of Captain Watanabe's name when I went to Iloilo and there was a ceremony where all the officers introduced themselves.

Q How long had you known Captain Kengo Watanabe when the expedition started?

A I saw Captain Watanabe at that time and once on August 16 or 17, and at the time he became a brigade adjutant.

Q Did you receive any bad reports or adverse criticism regarding Captain Kengo Watanabe while you were on Panay?

A No.

Q Did you hear anything later concerning him?

A When do you mean by "later"?

Q Any time up to the end of the war.

A I know him after he became my adjutant.

Q What was your observation as to the relationship between Colonel Tozuka and Captain Kengo Watanabe?

A The characters of these two men are absolutely different, and I observed that they did not get along too well.

Q Did you appoint Captain Kengo Watanabe as your adjutant of your brigade?

A No.

Q Who made the appointment?

A When the mixed brigade was beingorganized into the division, the head of the committee, Colonel Wada, was the one who placed him as an adjutant.

Q Did you make any objection?

A In order to accomplish the mission of the brigade, I told Colonel Wada that it was necessary to appoint someone who knew my nature and my ideas as an adjutant. However, Colonel Wada did not accept my opinion because of the prevailing situation. He had to pick the personnel from one of the smaller units.

Q Did you recommend the promotion of Captain Kengo Watanabe to the rank of major?

A I did not recommend him.

Q What did you do?

A I will relate the general method taken by the Japanese Army as far as recommendations for promotions are concerned.

CAPTAIN YARD: Just a moment, please. Will this follow the same general testimony of the other witness in respect to promotion?

LIEUTENANT MC CULLOUGH: It will be a little more specific and it's also quite short.

CAPTAIN YARD: Very well.

COLONEL HAMBY: Proceed.

A (Continued) There are two types of observations: One is for periodical promotions, for routine promotions, and the other is for extraordinary promotions. The observation for the routine promotion is not done just for one officer such as Kengo Watanabe, but it is made for all of the officers. Therefore, at such time I gave one for Watanabe.

Q What observation or remark did you turn in regarding Captain Watanabe's efficiency?

A I observed that the character of Kengo Watanabe was that he was brave and also that he was smart. As for his faults, I observed that he was rather selfish and that he was extremely excitable. when coming up against the situation.

Q When did you make this efficiency check?

A Such routine reports are made by November 30th of each year. I first made one out for him in November of 1944, and it was submitted to my superior headquarters. From there it was sent to the War Ministry through channels.

Q In other words, then, you did not single out Captain Kengo Watanabe for promotion, is that correct?

A That is correct.

LIEUTENANT MC CULLOUGH: Sir, it is now 11:30. Do you desire to recess for the lunch hour?

COLONEL HAMBY: The Commission will recess until 1300.

(The Commission recessed at 1130 hours, 29 April 1946.)

AFTERNOON SESSION

The Commission convened pursuant to recess, at 1300 hours, 29 April 1946.

COLONEL HAMBY: The Commission is now in session. The record will show that Colonel Goff is absent.

CAPTAIN YARD: Sir, may the record show that the following members of the Commission are present: Colonel Hamby, Colonel Warren, Lieutenant Colonel Chase, and Captain Ellingson; that the accused together with his defense counsel and personal interpreter, and members of the prosecution, are present.

(To interpreter) Will you remind the witness that he is still under oath.

(Interpreter Ogita translated to the witness.)

DIRECT EXAMINATION (Cont'd)

BY LIEUTENANT MC CULLOUGH:

Q Did you locate your command post in the mountains back of San Juan near Bacolod in April 1945?

A Yes.

Q While you were there did Lieutenant Colonel Watanabe report to you about an airplane crash in one of the mountains northeast to your outpost?

A Yes. This report stated that a large United States aircraft fell in the mountains and exploded and was burning.

Q Did he say anything to you about survivors in that first report?

A I did not hear anything about that.

Q Did you ask him whether or not there were any survivors at the time he made his first report to you?

A Yes, I asked him.

Q What did he tell you?

A He stated that the airplane was burning and that he believed there was no survivor.

Q What did you next hear about the crash?

A Several days later Intelligence Officer Murayama reported that there was a survivor of the crash and he was investigated at the headquarters after which, under orders of Major Kengo Watanabe, he was executed.

Q Then did you receive the second report after the aviator had been killed?

A Yes.

Q What did you do upon receiving that second report?

A I immediately called Lieutenant Colonel Watanabe and asked him, "Did you know that there was a surviving aviator of the crash and that he was killed?" Lieutenant Colonel Watanabe answered, "I just heard about that right now and was just about to report about it."

Q Did you then order Colonel Watanabe to make an investigation of this execution?

A Yes, I ordered him. I told Colonel Watanabe to prepare documents on this investigation of the concerned party for court-martial. I called Major Watanabe, the one who ordered the execution, and told him, "You will be brought up for court-martial and will be tried for criminal action. However, at the present time, due to the battle situation, I cannot imprison you, so you will serve with this action pending. Consider yourself being punished right now."

Q Did you consider him under arrest at that time?

A Yes.

Q Where was your shack located with reference to the Intelligence shack in your mountain outpost?

A My shack was about 200 meters away from the Intelligence shack.

Q Did you ever visit the Intelligence shack?

A No.

Q Are you sure that you did not witness the questioning of the American aviator?

A I heard about it after he was dead.

Q There has been testimony in this case by two witnesses that they saw you directing the questioning of the American aviator in your shack. Is that true?

CAPTAIN YARD: Just a moment. I will object to that question because the testimony is not that General Kono was directing the questioning but that he was present while the questioning was going on.

LIEUTENANT MC CULLOUGH: Withdraw the question. I will rephrase it.

Q There has been testimony in this trial that two witnesses saw you present in your shack while the American aviator was being questioned, is that true?

(An off-the-record discussion ensued among prosecution and defense counsel and the Commission.)

LIEUTENANT MC CULLOUGH: I will withdraw that last question.

Q Were you present during the questioning of the American aviator?

A No.

Q Are you sure of that?

A Yes, I swear to God that I am sure.

Q Are there any Filipinos allowed near your shack?

A They are absolutely prohibited.

Q Was there a standing order prohibiting them from coming near your shack?

A For security reasons even officers without special permission are prohibited from entering the headquarters. For a radius of 300 meters around the headquarters the entrance and exits of officers are watched by guards.

Q Do you know why Captain Kengo Watanabe, or Major Watanabe at that time, killed this American aviator?

A I do not know.

Q Do you have any explanation to make of his action?

A I don't know why he killed him but here is my estimation: The situation at that time was extremely critical, as I will cite in the following statement. From around April 14 the bombardment became especially fierce and we started to receive artillery shelling extremely close to the headquarters night and day. The mountain was becoming bare of trees and the incendiary bombs were causing fires. On the 18th, the 19th, and 20th, for three days just before 2000, fixed artillery shelling was conducted against us. This was extremely accurate. Twenty-six men were killed from the headquarters personnel, including Lieutenant Colonel Murayama. Because of such situation I believe Watanabe was in an extremely nervous condition. On top of that about 1,500 meters in front of the headquarters the enemy had thirty tanks lined up as main strength and was about to break through. I think this caused him to lose his facility for cool thinking.

Q Do you recall having made a statement to the prosecution investigators concerning this aviator incident?

A Yes.

Q Do you remember the words that you used in replying to some of the questions which were asked you by them?

A I don't know how the words that I used at that time was translated into English, but I made the statement as follows: I stated that I heard from Lieutenant Colonel Watanabe that an American aircraft fell, exploded, and was burning in the mountains.

Q Now, one of the questions was, "Have you seen a flier who was a survivor of that plane crash?" and your answer was, "I did not see such a person nor hear of him"; is that correct?

A I believe that is what I stated. However, I answered in such a manner, based upon the condition at the time and the report of Colonel Watanabe. When I was asked the question I believed that they were referring to the time when the airplane fell and I made the answer, based upon Watanabe's report.

Q Did the investigator ask you anything further about that at that time, referring to the American aviator incident?

A I do not receive any questions about the aviators at that time. The investigator next jumped to the subject of how we were in the mountains.

Q Under the system of Japanese Army law who would be held responsible if a subordinate commits a violation of the laws of war?

A The actual perpetrator of the crime will be brought up for court-martial and he will be handled as a criminal. However, his superior commander will not be tried for criminal action just because he happened to be the superior commander.

However, the fact that he had such a subordinate may bring about administrative punishment, according to the severity of the crime of the subordinate.

LIEUTENANT MC CULLOUGH: That concludes the direct examination of this witness.

COLONEL HAMBY: Cross-examination.

CROSS-EXAMINATION

BY CAPTAIN YARD:

Q Do you know whether that rule of Japanese military law is consistent with the Rules of Land Warfare?

A I believe generally the policy is the same.

Q What was your opinion of Lieutenant Colonel Tozuka in so far as the fulfilling of his military duty was concerned.

A Lieutenant Colonel Tozuka has a reserve and quiet nature. I believe he is not fitted for combat operations. On the contrary, I think he is more fitted for office work.

Q How long did Colonel Tozuka serve under you?

A He was a battalion commander under my command from May 1943, when I first took office, until the time of surrender.

Q When did you first make this observation about Colonel Tozuka?

A That opinion and observation was formed since I first took office and as I observed him through contact with him.

Q Then did you feel that he could not control the officers and noncommissioned officers in his command?

A Not that he was unable to control his men but I believe there are men who can do it better than he can.

Q Did you ever request that he be removed as the commanding officer of the 37th Independent Infantry Security Battalion?

A I have never requested anyone.

Q Did you have the authority to remove him?

A I did not have the authority.

Q Then knowing his unfitness as a combat officer, did you then scrutinize his work more closely than you ordinarily would have?

A Yes, I have observed him.

Q Then would you say that, particularly during the period from August 1943 through December 1944, you carefully watched Lieutenant Colonel Tozuka and how he conducted his command?

A I observed him as much as I can.

Q And would you say as a consequence of this observation you were familiar with the conduct of the Tozuka command during that period?

A I have no means of knowing the conduct of the men, aside from reports from that unit.

Q I believe you stated that you had even talked with corporals in subordinate units concerning your policy, is that right?

A Yes.

Q What did you think of 1st Lieutenant Hajime Fujii?

A I do not know.

Q Do you know whether or not Hajime Fujii, 1st Lieutenant, was in the Tozuka Unit?

A I just know that he was a company commander in the Tozuka Unit.

Q Have you ever talked with him?

A I talked to him at Canlubang, when I came to Canlubang.

Q When was that?

A When I came to Canlubang, I believe it was February.

Q Of what year?

A Of this year.

Q Then you never explained to him the policy of kindness toward civilians that you did to corporals in your command, is that right?

A I cannot remember directly telling him.

Q Did you know 2d Lieutenant Noriyuki Otsuka, who was a member of the Tozuka Unit?

A I know Otsuka.

Q Had you ever talked with him?

A I spoke to him just recently.

Q Did you ever explain your policy to Lieutenant Otsuka?

A I have never spoken to him directly.

Q Did you ever hear that Fujii tortured and killed civilians on Panay Island?

A No.

Q What was your opinion of Fujii as a company commander?

A I believe that he was serving faithfully to his duties.

Q What was your opinion of Noriyuki Otsuka as a combat officer?

A I do not know much about Otsuka.

Q Do you know Toshimi Kumai, 1st Lieutenant?

A Yes.

Q Have you ever explained your policy to Lieutenant Kumai?

A I did not issue orders to these men individually, to these officers individually. I issue orders to them through their unit commander. However, when I make an inspection trip, I speak to persons directly, and even down to corporals. However, I can only tell them my policies if they come to see me on business or some other purposes. Usually my orders are transmitted to them through their unit commanders.

Q Didn't you testify in substance, however, that you made your policy known to all the members of your command, even down to corporals and to replacements under your command?

A I gave them my views because the opportunity or occasion arose.

Q Did you direct that members of your command would be instructed in the Rules of Land Warfare?

A I did not require them to know each clause of the Rules of Land Warfare. However, I required them to be taught, as common knowledge generally, the Rules of Land Warfare.

Q Then Lieutenant Colonel Tozuka was telling a lie before this Commission when he said that he had had no instruction on the Rules of Land Warfare for ten years or better.

A Lieutenant Colonel Tozuka referred to his education as a formal course in the school. What I was referring to was that I required the men to be told about the Rules of Land Warfare.

Q Who was supposed to tell them?

A The immediate commander of the smaller units.

Q Were your men so told about the Rules of Land Warfare?

A I believe that they have heard about it.

COLONEL HAMBY: At this time the Commission will take a short recess.

(Short recess.)

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: Will you remind the witness that he is still under oath.

(The interpreter translated to the witness.)

CAPTAIN YARD: Will you read the last question and answer, please.

(The last question and answer was read by the reporter.)

CROSS-EXAMINATION (Continued)

BY CAPTAIN YARD:

Q Did you hear the testimony of the thirty-eight witnesses for the prosecution in this case?

A Yes.

Q Did you hear those witnesses testify as to the killing of approximately twenty-five hundred noncombatant civilians on Panay Island?

A Yes.

Q And you heard identified as those responsible for the killing or the actual killers men under or connected with the Tozuka command and Tozuka; is that right?

A Yes. I heard that but it is yet not clear to me whether they were killed in combat operations or whether they were murdered.

Q All right. Did you ever hear that members of your command in combat had killed approximately twenty-five hundred persons, included among which were women and children?

A I recognized the fact that there were inevitable casualties accompanying combat operations.

Q But you have heard the witnesses testify that the victims that were murdered were bayoneted or beheaded and killed in cold blood without a trial, is that not true?

A Yes, I heard that.

Q How do you account for the fact that your control of your subordinates was so poor that this number of persons could be executed without your knowing it?

INTERPRETER OGITA: Could you break that into two sentences?

CAPTAIN YARD: All right. I withdraw the question.

Q Do you mean to tell us that one of your combat units could kill twenty-five hundred persons without your knowing about it?

A I did not know that my unit massacred them.

Q Was the control of your unit such that this knowledge would not be brought to you, that this information would not be brought to you?

A I took as much steps as I can in supervising and controlling my men. However, I cannot control something that happens outside of my knowledge.

Q If members of your command murdered 2500 unarmed non-combatant civilians, would you say that you were exercising proper control?

A If that was the fact, it cannot be helped if it is said that my control was not sufficient.

Q If it is a fact, would you say that your control had been sufficient?

A That is how I believe it.

Q You mean you believe your control was sufficient?

A I took all the possible steps to control my men. If outside of my knowledge such things happened and victims of combat and guerrillas who were killed in combat and battle casualties from long ago were combined to the figure of 2,500 and this figure is made to look as if they were all massacred under my jurisdiction, I believe there is an infringement there. I myself took all the possible steps to control my men.

Q It was upon your orders that the punitive expeditions were conducted, isn't that right?

A Yes.

Q And it was practically your entire mission on Panay Island, is that right?

A Before I came, punitive expeditions were carried out on Panay Island; after I took office, punitive expeditions were

carried out twice under orders.

Q It was as a consequence of your orders that the expedition by water to Batan was conducted, isn't that right?

A Yes.

Q And it was as a consequence of your orders that the expedition around Sara and Ajuy were conducted, isn't that right?

A Yes.

Q And it was as a consequence of your orders that the expedition in the mountains near Libacao was conducted, isn't that right?

A Yes.

Q And it was as a consequence of your orders that the expedition around Tigbauan and Miagao were conducted, isn't that right?

A Yes. However, various security units went on expeditions as their own mission. Therefore, it cannot be said that they went on expeditions only because of my orders.

Q And it was as a consequence of your orders that an expedition was conducted on Guimaras Island, isn't that right?

A Yes.

Q You were interested in what happened on these expeditions, weren't you?

A I received reports sometimes on these expeditions and sometimes I did not receive reports; however, I was always concerned with what went on during the expedition.

Q Well, didn't you make it your duty to find out what happened on the expeditions which you had ordered?

A I did as much as I can.

Q Isn't it true that you sent Colonel Watanabe on some of these expeditions to determine what went on?

A To where?

Q On any one of the expeditions.

A Colonel Watanabe was mostly at my side doing his work, however he went to Capiz one time.

Q How many persons other than members of the Imperial Japanese Army were sent from Panay Island to Manila for trial?

A I do not remember clearly.

Q Approximately how many?

A I believe about three persons.

Q Isn't it the truth that it was customary for the Japanese officer whose men captured guerrilla suspects to summarily execute them on the spot?

A My policy was to release them. As I said before, the guerrilla suspects were released. Those more highly suspected were assembled in a central place for approximately one month and trained and educated; then released.

Q If guerrilla suspects were captured at a place and time when there was danger of guerrilla attack to your forces, would they still be released then and there?

A Such things cannot be handled or determined at a far-away desk. Those things must be handled according to the opinion of the commander that is at the spot.

Q Then there might be times, in your opinion, when the commander would be justified in executing such persons who had been rounded up?

A According to the battle situation, sometimes the commanding officer may not be able to release the captured guerrilla suspects, thereby increasing the strength of the enemy. A situation may arise where he may have to kill them on the spot.

However, that is not my basic policy. My basic policy is to release them.

CAPTAIN YARD: I have no further questions.

LIEUTENANT MC CULLOUGH: I have a few, sir, on redirect.

COLONEL HAMBY: Proceed.

REDIRECT EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Do all appointments of a battalion commander have to come from the War Ministry?

A Yes.

Q If you made a request to remove one of your subordinate officers do you believe they would have done so in view of the appointment of Captain Watanabe as battalion adjutant at that time?

A The War Ministry is the one who handled personnel and if the personnel department were to function smoothly they cannot always consider personal opinions. The War Ministry makes appointments according to their own discretion and, as I have said, personal opinions cannot always be considered, especially when the Pacific situation was getting critical and transportation was getting difficult. Therefore, according to the situation the War Ministry cannot always place the appropriate person in a certain post.

Q Did you have any opportunity to talk to members of the Tozuka Unit while they were on that expedition?

A No.

Q The Panay guerrilla expedition is the one that I had reference to. Now, is your answer the same?

A After I issued an order to a unit, the unit commander will act according to his own judgment and once they leave, I do not know what area specifically they are located in. However, at times when they make a wireless contact I would find their position. generally.

Q Are the Rules of Land Warfare incorporated in the Japanese Combat Manual and other manuals used by the Army to train both their officers and men?

A Yes.

Q In the Japanese Army what are the ways in which a commanding officer makes known his policy to his subordinates?

A Through instructions, orders, and directly by mouth.

Q What was the maximum force that Colonel Tozuka had under his command on either of the two guerrilla expeditions he went on in Panay Island?

A When the Tozuka battalion conducted an operation, the most they mustered was about 400, at most.

Q What was the largest force you ever had under your command on the Visayan Islands?

A When it was at its highest strength I had approximately two thousand. These men were distributed in small groups to the various islands in the Visayan group .

Q In your ordering these two guerrilla expeditions on Panay Island, were you carrying out orders which you had received from the 14th Army?

A Yes.

Q Does that also include Guimaras Island?

A Yes.

Q And Tablas Island?

A Yes.

LIEUTENANT MC CULLOUGH: That's all the questions, sir.

CAPTAIN YARD: I just have one or two, sir.

RECROSS EXAMINATION

BY CAPTAIN YARD:

Q Did you report to the 14th Army the action of your forces on Panay Island?

A Yes.

Q And that necessitated your receiving from your own forces reports of their actions; is that right?

A I reported after I received such reports.

Q Do you mean to say that you had never received a report that even one civilian had been killed unlawfully on Panay Island by members of your command?

A I have never received any such report.

CAPTAIN YARD: That's all.

COLONEL HAMBY: Questions by the Commission? There appear to be none.

LIEUTENANT MC CULLOUGH: I have nothing further, sir.

COLONEL HAMBY: Witness excused.

(Witness excused.)

COLONEL HAMBY: The Commission will take a short recess.

(Short recess.)

COLONEL HAMBY: The Commission is now in session.

LIEUTENANT MC CULLOUGH: Sir, at this time the defense rests. However, it requests the privilege of calling Hideichi Nakamura as a rebuttal witness tomorrow. He was scheduled to be brought in here today from LUPOW. We have just received word that he will not arrive until tomorrow morning.

CAPTAIN YARD: Sir, we had planned to have one rebuttal witness from Panay Island here tomorrow morning. Our latest information is that he is not in Manila or we would bring him over and have his testimony this afternoon. So we are not prepared to go forward with our rebuttal and request a recess until 8:30 tomorrow morning.

LIEUTENANT MC CULLOUGH: The defense will join in that request.

COLONEL HAMBY: The Commission will recess until 0830 tomorrow morning.

(The Commission adjourned at 1510 hours, 29 April 1946.)

(205J)

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Armed Forces
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
vs	)	PUBLIC TRIAL
	)	
TAKESHI KONO	)	
	)	
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VOLUME XI

PAGES 838 TO 884

MANILA, P.I.

DATE: 30 April 1946

COPY NO: 4

CERTIFICATION

This certifies that this volume is a part of the proceedings of the Military Commission appointed by Paragraph 21, Special Orders No. 85, Headquarters, United States Army Forces, Western Pacific, dated 12 April 1946, in the trial of the case of the United States of America v. Takeshi Kono.

Dated 7 May 1946

WILLIAM R. HAMBY
Colonel, CAV
President of Commission

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Armed Forces
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
vs	)	PUBLIC TRIAL
	)	
TAKESHI KONO	)	
	)	
- - - - - - - - - - - - - -	)	

Court No. 1
High Commissioner's Residence
Manila, P. I.
30 April 1946

Met, pursuant to adjournment, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL WILLIAM R. HAMBY, CAV, President and Law Member
COLONEL JOHN L. GOFF, CAC
COLONEL JOSEPH H. WARREN, INF
LIEUTENANT COLONEL JOHN A. CHASE, (CMP) FA
CAPTAIN JACK ELLINGSON, CMP

APPEARANCES:

FOR THE PROSECUTION:

(AS PREVIOUSLY NOTED.)

FOR THE DEFENSE:

(AS PREVIOUSLY NOTED.)

INTERPRETERS FOR THE COMMISSION:

(AS PREVIOUSLY NOTED.)

REPORTERS FOR THE COMMISSION:

ARNOLD COHEN
WILLIAM COHEN

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Captain William S. Yard 878

P R O C E E D I N G S

The Commission convened, pursuant to adjournment, at 0830 hours, 30 April 1946, at Courtroom No. 1, High Commissioner's Residence, Manila, P.I.

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: Sir, may the record show that all members of the Commission are present, the accused, together with his defense counsel and personal interpreter, and members of the prosecution are present.

In view of the fact that Colonel Goff was absent during the session yesterday afternoon, permission is requested to direct certain questions to the Colonel.

COLONEL HAMBY: Proceed.

CAPTAIN YARD: Sir, have you familiarized yourself with the substance of proceedings as they occurred yesterday afternoon?

COLONEL GOFF: Yes.

CAPTAIN YARD: Prosecution requests permission to further familiarize Colonel Goff.

COLONEL HAMBY: Proceed.

CAPTAIN YARD: The Commission convened yesterday afternoon, 29 April 1946, at 1300 hours. The accused, Takeshi Kono, resumed his direct testimony. The substance of that testimony was as follows: that he had a command post in the mountains of San Juan in April of 1945; that Lieutenant Colonel Watanabe reported the crash of a plane northeast of his headquarters. He reported that a large United States aircraft fell in the mountains, exploded, and was burning. He was questioned as to survivors and stated that he didn't hear anything about

survivors -- that is, Lieutenant Colonel Watanabe did not. Kono asked Watanabe about survivors and was told that the plane was burning and he, Watanabe, believed there were no survivors.

He next heard about the crash several days later when an intelligence officer said that there was a survivor; that he had been investigated and ordered executed by Major Kengo Watanabe. The accused then testified that he called Lieutenant Colonel Watanabe and asked him if he knew that there was a surviving aviator and that this surviving aviator had been killed, to which Watanabe replied that he had just then learned of it. The accused then ordered an investigation and told Lieutenant Colonel Watanabe to prepare documents on this investigation for court-martial. He then told Major Watanabe that he would be up for court-martial but that due to the pending situation he couldn't imprison him, but to consider himself then as being punished. And when asked the question, he said that he considered Major Watanabe as in arrest.

He further testified that his shack was located about two hundred meters from the intelligence shack and that he had never visited that intelligence shack. He said he had just heard about the questioning of the aviator after he learned that this aviator was killed. He said he was not present during the questioning of the aviator.

He further testified that no Filipinos were allowed near his shack without special permission; that the entrance and the exit were watched by guards. I believe he testified that the rule was no person within three hundred meters except with permission. He did not know why Major Watanabe killed the aviator.

He further stated, in answer to an explanation for this incident -- that is, the killing of the American aviator -- that he didn't know why but based on his opinion he said the situation was extremely critical from about 14 April, the bombardment was fierce, that his headquarters was under bombardment and artillery shelling night and day; that on the 18th, 19th and 20th of April, just before 2000, fixed artillery shelling of his headquarters was extremely accurate; that twenty-six men had been killed from the headquarters personnel, including Colonel Moruyama.

He believed that Major Watanabe was nervous. He stated further that within fifteen hundred meters of the headquarters there was a solid line of enemy tanks.

He testified that he had told the prosecution investigators in a statement to them that he had heard from Lieutenant Colonel Watanabe that the aircraft had fallen, exploded, and was burning in the mountains, and he did not see or hear of the flier.

He further stated that under Japanese Army law if a subordinate committed a violation of the laws of war, that the actual perpetrator would be court-martialed; that the superior would not be punished, but due to the fact that this had been through one of his subordinates, there might be an administrative punishment invoked upon the superior.

On cross-examination the accused testified in substance as follows: that he believed that Japanese military law was consistent with the Rules of Land Warfare. When asked his opinion on Lieutenant Colonel Ryoichi Tozuka's ability in fulfilling his military duty, he answered he, Colonel Tozuka, was reserved and of a quiet nature and not fitted for combat

duties; that Tozuka had served under the accused from May 1943 until the surrender. When asked when he had made this observation of Tozuka, he stated, "From the beginning." He was asked whether or not he felt that Tozuka could not control the men under his command. In answer to that question the accused stated in substance that he believed that there were men who could have done better. He stated that he never requested Tozuka's removal; that he did not have the authority to remove him himself. He said that he had observed Tozuka as carefully as he could.

When asked whether or not he was familiar with what had gone on in the Tozuka command, he said that he had no means of knowing except from reports from the various units. When asked his opinion of Fujii he said that he didn't know, that he had talked with him once in February 1946 at LUPOW. He said that he had just talked with Noriyuki Otsuka, that he did not explain his policy to him. He said that he had not heard of Fujii killing anyone. He said that he knew Lieutenant Kumai, that he had never explained his policy to him. He said that he did not issue orders to those men, but to their unit commanders. He said that he did not require all of his men to know all of the Rules of Land Warfare but they should know them generally.

He was asked whether or not he had heard the testimony of the prosecution's thirty-eight witnesses, in which some approximately twenty-five hundred murders were related. He said yes, but it was not clear to him whether the deaths occurred in combat or whether it was murder. He said that he had heard the testimony that the witnesses were killed without trial.

He was asked the question whether or not the control of his troops was so poor that the number of persons executed could have been executed without his knowing it. He said he did not know that any members of his unit had killed them; that he had taken steps to control the situation but couldn't help something that he knew nothing about. He said that he had ordered punitive expeditions on Panay; that they were carried out on his orders. He further qualified his answer to certain specific locations, including punitive expeditions to Batan, Ajuy, and Sara, near the mountains of Libacao, Miagao, and Tigbauan. He said that in addition to these expeditions there were security expeditions carried out by the subordinate commanders without orders from him. He stated that he had ordered the expedition to Guimaras. He further stated that he received reports on the expeditions and did as much as he could to find out what went on.

He was asked whether or not he had ever sent Colonel Watanabe to find out what was going on. He answered that Colonel Watanabe had gone on an expedition to Capiz once to observe as to the conduct of the expedition.

When asked whether or not it was his policy that when suspects were captured the troops would execute them on the spot, he said that his policy was to release them. He was further asked the question, if, under certain circumstances, a commanding officer could execute suspects. He said it would depend upon the situation, that the commander may not be in a position to release them and have them returned to the enemy, not be able to carry them with him, and that he may have to kill them on the spot. He said, "However, that is not my basic policy."

Lieutenant McCullough, is there anything you want to add?

LIEUTENANT MC CULLOUGH: No, I believe that is a fair summary of the testimony produced before the Commission. However, I would like to make the observation that the record itself is the best evidence.

CAPTAIN YARD: Sir, do you have any additional questions?

COLONEL GOFF: No.

CAPTAIN YARD: Prosecution is ready to proceed with its rebuttal and calls as its first witness Fermin J. Caram.

FERMIN G. CARAM

a witness for the prosecution in rebuttal, was duly sworn and testified as follows through Interpreter Lucy Casanovas:

DIRECT EXAMINATION

BY CAPTAIN YARD:

Q Will you state your name.

A Fermin G. Caram.

Q That is "G" as in George?

A "G" as in George.

Q What is your address?

A Polyclinic and Hospital, Iloilo City, Iloilo Province.

Q How old are you?

A Fifty-seven years.

Q What is your nationality?

A Filipino.

Q What is your business or profession?

A Doctor, physician.

Q Prior to the occupation of Panay Island by the Japanese, did you occupy any official position in the Philippine Government?

A I occupied different positions in the Philippine Government and I was assemblyman and on October 1941 I was named governor of Iloilo by President Quezon.

Q Whom did you relieve as governor at that time?

A Governor Tomas Confesor.

Q And how long did you act as governor under that appointment?

A Until March 1, 1942.

Q By whom were you relieved then?

A By Oscar Ledesma, who continued as governor until the 15th of March 1942.

Q And who succeeded Ledesma?

A Tomas Confesor, who occupied this post until the 16th of April 1942, until the time of the Japanese invasion.

Q Did you later become governor?

A Yes, until July 1942 when I was obliged by the Japanese to be governor of the city.

Q Was that "of the city" or "of the Province of Iloilo"?

A Of the Province of Iloilo.

Q And how long after July 1942 did you continue as governor of Iloilo Province?

A Until the 20th of March 1945, until the liberation of the city by the Americans.

Q And since March 1945 have you held any governmental position?

A No.

Q I believe you were a recent congressional candidate from Iloilo, is that right?

A Yes, sir.

Q During the period you were governor while the Japanese were in occupation, did you record various events that happened?

A Yes, I kept a record and notes of important events that happened while I was governor during the Japanese occupation.

Q Do you have this record or memorandum?

A Yes, they were burned when the provincial building was burned and my records were destroyed.

Q Do you know Takeshi Kono, formerly Lieutenant general in the Imperial Japanese Army?

A Yes, I know him.

Q If you see him in this courtroom will you point him out, please.

A Yes, I can.

Q Will you point him out?

A (Pointing.)

CAPTAIN YARD: May the record show that the accused stood and was pointed out by the witness.

Q Was he in command of forces on Panay Island?

A Yes, General Kono was commander of Japanese forces in Panay.

Q Do you recall when he assumed command?

A I remember more or less that it was in May 1943.

Q And how long did he continue in command?

A Until the Japanese surrendered to the American forces.

Q I hand you a photograph marked as Prosecution's Exhibit No. 3 and ask you whose picture that is.

A This is Colonel Tozuka.

Q Did you know Lieutenant Colonel Tozuka?

A I knew him quite well.

Q Did he command forces on Panay Island?

A Yes, he was the commander of the Japanese forces in Panay before General Kono.

Q Did he command a battalion with headquarters in Iloilo City?

A Yes, he was the commander of the Japanese garrison and had his headquarters in Iloilo City.

Q How long did Colonel Tozuka continue under the command of General Kono?

A Until March 1945 when the American forces liberated the city.

Q I hand you a photograph marked as Prosecution's Exhibit No. 6 and ask you whose picture that is.

A This is Colonel Watanabe.

Q Did you know Colonel Watanabe?

A I knew him very well.

Q Do you recall when you first became acquainted with Colonel Watanabe?

A In May 1943 at the same time that I met General Kono.

Q What was his position in the Japanese Army?

A He was a member of the staff of General Kono.

Q During the Japanese occupation and while you were governor will you describe the treatment of the civilians by the Japanese?

A While I was governor of Iloilo the Japanese soldiers committed atrocities to civilians, men, women, and children; murdered and raped them.

Q And did this mistreatment of civilians continue during the Kono command?

A It commenced with the arrival of the Japanese in Iloilo; it continued under Colonel Tozuka, General Kono, until the liberation.

Q Do you know of any punitive expeditions that were carried out in Panay Island by the Japanese?

A Yes, they made several punitive expeditions but the worst one was in the month of September 1943.

Q And during what period did they continue to carry out these punitive expeditions?

A They continued from September 1943, the end of 1943, to the year 1944 until the American liberation.

Q How did you learn of these punitive expeditions?

A My provincial secretary, Abelardo Afortadora, the right-hand man of Tomas Confesor and with whom he had continuous contacts, watched the Japanese activities in Iloilo. When we saw that the Japanese were preparing punitive expeditions, we immediately sent word to Tomas Confesor and with the information given to me by civilians who came to me continuously with complaints of killings and stealings and rapes committed by the Japanese, and in my visits to the towns and barrios of the Province of Iloilo, I would find Japanese soldiers and officers during these punitive expeditions.

Q These soldiers were under whose command?

A Lieutenant Colonel Tozuka.

Q Did you ever complain to Lieutenant Colonel Tozuka of these killings?

A Several times I complained to Colonel Tozuka of these killings by the Japanese of these civilians, women and children.

Q What was the first time that you complained, if you recall?

A More or less I remember it was on the first days of September 1943.

Q And where did you complain?

A In his office, the high school of the Iloilo.

Q And was the Japanese garrison in the Iloilo City High School?

A That is where the headquarters of the Japanese was located.

Q And did you make this complaint to Colonel Tozuka personally?

A I went personally to Colonel Tozuka to complain of these atrocities the Japanese soldiers did to the civilians.

Q What did Colonel Tozuka say?

A He promised to oblige his soldiers to stop these killings.

Q Did he tell you whether or not he knew that killings had been going on?

A No.

Q After you complained to him did you receive reports that the killings were still going on?

A Yes, I kept receiving complaints of these killings of these civilians.

Q Do you recall where these killings occurred?

A Yes, in Tigbauan, where they killed 160; in Leon, in Ajuy, Sara, Guimaras Island, and in Miagao.

Q When did you next complain to Colonel Tozuka?

A On the last days of September 1943.

Q What did he say at that time?

A He made the same promise that he made the first time: that he would stop these killings.

Q After this second visit did you receive reports of killings?

A Continuously I received complaints.

Q And did you again complain to Colonel Tozuka?

A No, but I went to the office of General Kono and appealed to him concerning these killings of the Japanese and the civilians.

Q Do you remember the approximate date when you went to General Kono about the killings?

A More or less in the month of October 1943.

Q And what did General Kono say?

A He made the same promise as Colonel Tozuka.

Q And then after you saw General Kono did you continue to receive reports of the killings?

A Yes, I kept receiving complaints of the killings and abuses of the Japanese to the civilians until the month of December 1944.

Q Did you ever complain to Colonel Tozuka after that?

A I kept complaining to Colonel Tozuka and practically went to see him every week to complain.

Q Did you ever complain to General Kono again?

A No, not any more.

Q Why?

A It was very difficult to see General Kono; even to see Colonel Tozuka I had to wait several hours.

Q Do you know whether or not Colonel Watanabe whose picture you identified here in your testimony was ever involved in any of these punitive expeditions?

A Yes, I saw Colonel Watanabe in these small towns directing himself these punitive expeditions, and also I saw General Kono in these small towns directing these punitive expeditions.

Q Do you know whether or not in the absence of General Kono, Colonel Watanabe, whose picture you identified earlier in your testimony would assume any command in Panay Island?

A Colonel Watanabe and General Kono alternated in commanding the Japanese forces in Iloilo, on the Island of Panay.

Q In what small town or towns did you see General Kono?

A I saw General Kono in San Miguel and Oton. I also saw Colonel Watanabe in San Miguel and Oton.

Q Do you remember about when this was that you saw them in those towns?

A In September 1943.

Q Did you ever complain to Colonel Watanabe about killings on Panay?

A When Watanabe was in Oton during one of his punitive expeditions I complained to him of killing of 160 civilians in Tigbauan.

Q When was the first time that you complained to Colonel Watanabe?

A It was in October 1943.

Q And after October 1943 did you ever complain to Colonel Watanabe?

A Whenever I had the opportunity of seeing Colonel Watanabe I complained of these killings of men, women, and children by the Japanese soldiers.

Q Did you ever complain to him during 1944?

A Yes, on December, 1944, I complained to Colonel Watanabe about the killings ordered by Captain Koike, chief of the military police, the killing of prisoners,

fifty-nine of them -- nine women and fifty men. They were killed on the 14th of December, 1944.

Q Prior to December '44, when you complained to Colonel Watanabe, what would he say?

A He usually told me, "Yes, I understand, no more speak."

Q Did he understand English, that is, Colonel Watanabe?

A Very little.

Q Did he speak English.

A He talked a little.

Q Did General Kono understand English?

A No.

Q When you talked with him was it through an interpreter?

A Always with an interpreter.

Q I believe you have testified that Colonel Watanabe and General Kono alternated in command on Panay Island. What do you mean by that?

A I mean that in the absence of General Kono as commander of the Japanese forces on Panay Island, Colonel Watanabe took command, took his place.

Q Did you ever make a complaint to Colonel Watanabe in San Miguel?

A On one occasion, in September 1943, the civilians informed me that the family of Tomas Confesor had been captured in the mountains and I immediately went to San Miguel to ask Lieutenant Yoshida, who was the one who had captured them, to put them under my custody.

But Lieutenant Yoshida told me that it was not in his power to do so. And he told me to go to Colonel Watanabe. I went to him but Colonel Watanabe refused to see me.

Q Where did you go to see Colonel Watanabe?

A On that occasion I went to the garrison of San Miguel because in those times they kept moving headquarters from one place to another.

CAPTAIN YARD: Sir, does the Commission desire to recess?

COLONEL HAMBY: At this time the Commission will take a short recess.

(Short recess.)

COLONEL HAMBY: The Commission is now in session.

DIRECT EXAMINATION (CONT'D.)

BY CAPTAIN YARD:

Q Do you recall any other occasion when Lieutenant Colonel Watanabe was in command?

A Yes.

Q Where was that?

A Yes, on October, 1943, in Oton. I saw him and complained about the killing of the 160 civilians in Tigbauan.

Q Did you ever talk with General Kuroda about the killings on Panay?

A Yes, General Kuroda was in Iloilo City and the Japanese officers told me to see him off at the airport and there I saw General Kuroda. I talked to General Kuroda about these killings and atrocities committed by the Japanese on the civilians.

Q And what did General Kuroda say?

A He told me in English, "I am sorry, that is not my instruction."

Q Did he tell you whom you should see about this matter?

A No.

Q When was this that you talked to General Kuroda?

A I don't remember exactly but it was in the year 1944.

Q Did any of the Japanese officers ever admit to you that civilians had been killed unlawfully?

A Yes, Colonel Tozuka admitted that the Japanese soldiers were killing the civilians.

Q Do you know why the punitive expeditions were being carried out?

A Because of guerrilla activities.

Q Do you know whether or not there were any trials given the civilians on Panay Island by the Japanese?

A No, they were never submitted to court-martial.

Q Did you ever learn the reputation of Colonel Tozuka from the Japanese?

A Yes, when Colonel Tozuka came to Iloilo the chief of the military administration, Lieutenant Mihara, told me that Colonel Tozuka was called the "terror of China" and that our

lives were in danger and to be very careful because our lives were in danger.

Q Did you hear of the killing of American missionaries at Camp Hopevale near Tapaz in Capiz Province in December of 1943?

A Yes, I heard of this unfortunate incident and I was very much interested and I went to Colonel Tozuka to ask about it and his interpreter, Matsuzaki, told me that these missionaries had not been killed but had been taken to Manila to the internee camp.

Q Did you later discover that they had been killed?

A Yes, I learned later that they had all been executed.

Q I hand you a photograph marked Prosecution's Exhibit No. 9 and ask you whose picture that is, if you can tell.

A That is the interpreter of Colonel Tozuka, Matsuzaki.

Q Before you complained to Colonel Tozuka, had you made other complaints to Japanese authorities concerning the killings on Panay Island?

A Yes, in the first place I complained to the military administration. The chief of the military administration then was Lieutenant Mihara, and also to the head of the military police who was Lieutenant Ohokura; and then I complained in written form to Colonel Furokawa, who was in Iloilo on a visit. I complained in writing. And this complaint caused discontent and ill feeling between the Japanese officers and myself, and here in Manila some Filipino officers advised me to be very careful because the Japanese officers had complained to them about my conduct.

Q And did they say because of your complaints that you were in danger yourself?

A Yes, they told me because of my complaints my life was in danger.

Q Dr. Caram, would you say that you exhausted every possibility in bringing these killings to the attention of the Japanese?

A Yes, I exhausted all my resources. I pleaded to the military administration, to the military police. I also appealed to the garrison and officers of the garrison, to Colonel Tozuka, General Kono, and Colonel Watanabe.

Q Continue if you have anything else to add.

A And lastly to General Kuroda, who was in Iloilo for a few hours in 1944.

CAPTAIN YARD: You may cross-examine.

CROSS-EXAMINATION

BY LIEUTENANT MC CULLOUGH:

Q Do you recall attending the graduation ceremony of the captured guerrillas about the end of March 1944 in Iloilo City?

A I don't believe I was in Iloilo. I believe I was in Manila.

Q Did you ever attend the graduation ceremony for any guerrilla suspects upon their graduation at any time on the Island of Panay?

A I remember having attended lectures given to the guerrilla prisoners, given by Japanese and Filipinos.

Q Isn't it a fact that you made a speech on one of those occasions in your capacity as governor of that island?

A Yes, I gave lectures to the prisoners and I told them that in the meanwhile to be resigned to their fate and I compared it to a pliant bamboo; when the storm passes the bamboo inclines and then stands up again when the storm is over.

Q Was this done in the presence of Japanese authorities?

A Yes, there were always Japanese officers present.

Q Did they reprimand or punish you in any manner for making statements of that kind?

A No, it's possible that they did not understand me because the interpreters did not speak correctly Visayan, nor English nor Spanish.

Q Did you have that same language difficulty in carrying on your conversations with Colonel Watanabe, General Kono, and the others that you spoke to?

A General Kono had an interpreter who spoke English correctly, and although Colonel Watanabe did not speak correctly English, we could understand each other; and Colonel Tozuka had an interpreter, Matsuzaki, who spoke correct English. These were never present when I gave lectures to these guerrilla prisoners.

Q Did you speak English at the time you carried on your conversation with General Kono?

A Yes, in English, to the interpreter.

Q Then, is there any reason why you are not testifying in English in this proceeding now?

A I prefer to speak Spanish because I speak it much easier and also due to the fact that I am speaking before Americans who speak English very differently and correctly. My English is very poor.

CAPTAIN YARD: May I suggest to defense counsel that if he would like to test the witness on his ability to speak English that he direct his questions directly to the witness and get his response in English.

LIEUTENANT MC CULLOUGH: I am quite agreeable to doing that. From now on, then, we will not use an interpreter and speak direct to the witness in English.

CAPTAIN YARD: From now on, Dr. Caram, you will speak in English.

THE WITNESS: I cannot hear very well, though.

(Whereupon the witness proceeded to testify in English.)

BY LIEUTENANT MC CULLOUGH:

Q Is there the same possibility that this language difficulty came up while you were speaking to these interpreters in carrying on your conversation with General Kono?

A Whenever I had to talk with General Kono I had to talk in English because his interpreter speaks English, and I had no other means to express myself but in English because their interpreter speaks in English. If I was the

one to be asked which language I would choose, I would choose to express myself in Spanish.

Q Then you did have some difficulty with your English in carrying on your conversations through an interpreter even with General Kono, is that correct?

A But I think I made myself understand all right, even with not correct English. His interpreter understood me very well. I noticed during the course of the conversation that the interpreter got the idea of what I wanted to transmit to General Kono.

Q In August or September 1943, did you secure the release of an aunt and a niece of Tomas Confesor from General Kono's headquarters?

A I got the release of the aunt of Tomas Confesor.

Q Did you also at the same time secure the release of a niece of Tomas Confesor?

A Yes, the daughter of Patricio Confesor, brother of Tomas Confesor, and the maid of Tomas Confesor.

Q Did you know a Moro guerrilla leader by the name of Captain Ali?

A Yes, I know.

Q Did you secure the release of this captain from General Kono's headquarters to your custody?

A I got the release of that captain and also of other ones, many of them. I got the release of Cesar Rosas, Major Altavas, Lieutenant Zaldariaga, Lieutenant Lopez, many of them. But more were killed than the ones that I was able to save them from the hand of the Japanese.

Q Now, how many would you say were released to your custody altogether?

A I cannot remember now but they were quite a good number.

Q Was Major Aguino one of those men?

A Yes,

Q Now, was he released also to your custody?

A He was released also.

Q Do you know what his rank was in the guerrilla army?

A He was Major Aguino.

Q Would you say, then, that he was one of the highest-ranking guerrilla suspects that was released to you by the headquarters of General Kono?

A He was not the only one. There were several of them. Major Rosas was one of the high-ranking officers of the guerrillas. Major Altavas also, captured by the Japanese during the punitive campaign.

Q Did you also know Major Castillion?

A Yes, his family.

Q Was he also released to your custody?

A Not himself; the family. The children of Major Castillion.

Q To be sure that we are speaking of the same person, the Major Castillion's name is spelled, C-a-s-t-i-l-l-i-o-n.

A Yes, Castillion.

Q Did you know him?

A I know him.

Q Was he released to your custody by General Kono's headquarters?

A He was never captured but his family was captured. The Major himself had never been captured.

Q Then was his family released to your custody?

A It was put under my custody.

Q Did you also arrange for the release of the mother of Colonel Chavez, another guerrilla leader?

A Yes,she was put under my custody also, the mother of Colonel Chavez.

Q Did you ever make any complaints to the Japanese officers that the guerrillas were molesting the property of the civilians and also the lives and property of those people in your province?

A No, I never.

Q You are positive that you never made such a complaint to the Japanese officers at any time while you were the puppet governor of Iloilo?

A I am positive that I did not present any complaint to them against the guerrillas' activities.

Q Did you ever make any request to the Japanese officials to increase their patrols in order to protect the civilians from the guerrillas who were molesting?

A No, I did not.

Q Do you know of anyone being captured by the guerrillas? I'll rephrase that question.

Do you know of any civilians being captured by the guerrillas?

A I do not remember. If you can mention the name, I may recall. I do not remember at the present time of any --

Q At any time that you were governor of Iloilo were there any civilians captured at any time by the guerrillas?

A I cannot remember at the present moment. If you can mention the name, I might recall, but at present I do not remember.

Q Did you know the guerrilla leaders in Iloilo Province?

A Peralta.

Q Did you make any complaint to Peralta about the guerrillas' activities?

A My contact was with Governor Confesor and lately my provincial secretary was with Colonel Serran, because I had as provincial secretary first Mr. Abelardo Aportadera, and then when Aportadera escaped to the mountains I put in his place a person captured by the Japanese who was Major Cesar Rosas. I put him as provincial secretary and me and Major Rosas was continuing maintaining contacts with the guerrillas through Colonel Serran, not directly with Colonel Peralta.

Q Then, did you make any complaints to either Colonel Peralta or any other guerrilla leaders about the atrocities that the guerrillas were committing?

A The only complaint I did was against the burning.

Q Against the burning?

A Burning.

Q All right. Now, what did they burn?

A Well, buildings, innocent building not a military objective. That's all. I told it to Major Rosas who presented the complaintto Colonel Serran.

Q Did you make any complaints to Colonel Chavez?

A No.

Q Did you know Colonel Chavez?

A I know. He used to write me and ask me regarding the fate of his mother and I used to answer him that his mother was all right and sound and she was in my house.

Q Did you ever hear of any of the Filipino civilians being murdered by the guerrillas in your province while you were governor?

A I heard.

Q How many would you say were murdered by the guerrillas?

A I cannot tell you how many people were killed.

Q Is it true that the churches and school buildings in Panay were burned by the guerrillas?

A Some were burned by the guerrillas and some were destroyed by the Japanese. And I presented the complaint to Colonel Tozuka about the destruction of churches. I was accompanied by Bishop Cuenco about the destruction of the churches because they wanted to use the stone for the landing field and they had no material. What they wanted to do was destroy the churches, the concrete buildings -- they destroyed to use it as material for the landing fields. And I went to the garrison, to Colonel Tozuka, accompanied by Monsignor Cuenco, the Bishop, to complain against that attitude of the Japanese.

Q Did you make any complaints to any guerrilla leaders about these murders that you have heard about or about the burnings that you have described?

A About the killing I did not because I do not know the reason, what compelled them to kill those people. They must have their own reason.

Q Isn't one of the reasons that you didn't speak to those guerrilla leaders that they threatened your own life at that time?

A No, they did not threaten my life. As a matter of fact I used to have conference with them and my attention

was called by Colonel Watanabe and I was told to stop the connection with the guerrilla, otherwise my neck was in danger because I used to have conference with the high officer of the guerrilla. One of them, Major Federico Salcedo, I had conferences with him several times in one barrio of Pototan and I was also investigated by Colonel Watanabe -- myself and the late Mayor Ferraris and the chief of police of Pototan, who was also an operative of the guerrillas, Manuel Seballos. We were investigated by Colonel Watanabe and Watanabe told me, "Look out, Governor, we know about your contacts with the guerrillas. If you will continue having that contact, your neck is in danger."

Q Did the guerrillas also threaten you?

A No, they never threatened me. I used to send them cigars, cigarettes, medicine, paper, typewriter ribbon, typewriter, and I used to send all what I could take from the Japanese, I used to send to them.

Q Isn't it a fact that you asked the Japanese officers down there to give you an escort whenever you went out of the city of Iloilo in order to protect your life?

A No, the Japanese when they wanted me to go to somewhere in the interior towns, they used to take me with them escorted by Japanese soldiers but when I want to go myself by my own will, I used to go alone or with Filipino constabulary, and that is the reason why I felt myself more safe, when I used to go alone, because I used to go even to San Joaquin, a town forty-five kilometers distant from the city. I used to return to my house at nine o'clock of the evening and nothing happened to me. And I have been even in Sara, in Ajuy, all around the province of Iloilo, without Japanese soldiers accompanying me; only with constabulary.

Q Now, were you a good friend of Confesor at that time?

A We were good friends. We were very close friends. He is alive; you can inquire of him any time.

Q Did he ever criticize you for the action that you took, becoming governor of Iloilo?

A I know you are referring about that letter wrote by me to Confesor. Confesor knew that that letter was not written by me; that that letter was brought to Iloilo by Colonel Furokawa and made me sign, and not only myself but Jose Veloso, Juan Quimbo, Major Tando, and myself -- we were four

signing that letter. And I was obliged to sign it. The letter was prepared already when it was brought to Iloilo, and Confesor knew all about it. That's why he answered it the way he answered it. But another letter he sent to me in very cordial terms thanking me for all information that we were supplying him.

Q Did you attend a banquet in February of 1944 at Colonel Tozuka's residence?

A I attended several banquets offered by the Japanese officer to the civil authorities.

Q Will you please speak quite loud, because it is rather noisy in here this morning.

A (Continuing) I attend several banquets offered by Japanese officers to the civil authority in Iloilo.

Q Do you particularly remember attending a banquet at Colonel Tozuka's house in February of 1944?

A I cannot remember now. All what I can answer, that was not the only banquet. Several banquets were offered by the Japanese officer.

Q All right. Then if you went to several banquets did you ever make an address at any of those banquets?

A Well, the routine address before eating. The Japanese officer used to deliver a speech that he offered that banquet for the civil authority, humble as it is, and for us to accept it; and sometimes I am the one to answer, sometimes the city mayor. When it was my turn I used to answer, thanking for the banquet -- splendid -- and very grateful, because we were satisfied, our stomachs full. That's all, thanking them.

Q And among the other things did you ask them to continue their work there?

A Never I ask them to continue their work of killing the civilians, innocent women and children. On the contrary, I have been exhausting all efforts going to their office practically every day, waiting hours for my turn to present my complaint against that atrocity, inhuman conduct, killing children. One of them, my godson in Alimodian, the family named Montilla, all the family killed, no one left. My blood was boiling and I went to these Japanese to complain. The hand of my godson was cut and inserted in the vagina of the mother in Alimodian. That was done by the Japanese, not because I have seen it; it was informed to me by the civilians.

Q Now, isn't it a fact that you went to General Kono's headquarters and asked him to station troops in various towns around Iloilo Province and particularly in Pavia, Oton, Santa Barbara, San Miguel, and other towns?

A No, sir, I did not ask for more soldiers.

Q Were you having any trouble at that time or receiving any complaints from the rice growers that the guerrillas were taking their crops?

A No, the one who were taking the crops were the Japanese.

Q Were the guerrillas also taking the crops?

A The guerrilla, if they took it, it was because it belongs to them; but the Japanese were taking the crops and were taking the food from the mouths of the Filipino, leaving the poor Filipino with hunger in the city -- we were surrounded by hunger -- and they had all the rice, and the rice belongs to the Filipino, and they had it themselves by force, using machine-gun and cannon, and letting the poor Filipino eating nothing. We were practically near to death if the American liberation forces of the Americans did not arrive on time.

We would be killed by hurger, all of us who were left in the city of Iloilo, more than 30,000 Filipinos. But the Japanese got the rice all right.

Q Isn't it a fact that you went to Colonel Tozuka for certain foodstuffs and supplies and that you were given those foodstuffs and supplies by him on a number of different occasions?

A Yes, I ask him on several occasions to help me and give me rice because I had no more means to get rice because I had the family of the guerrillas under my custody, and I have to feed the family of the guerrilla and my own family, and I knew they had the rice, all the rice. They had it in their possession. That's why I approached him to supply me some rice, and all what he used to give me, one sack every fifteen days for every month. That is a big generosity, one sack of rice! Thanks to the guerrillas, who are the ones who have brought the rice to my house.

Q Now, was the food situation worse in 1944 than it was in 1943?

A Worse in what --

Q Well, was it harder for you to get rice and sugar and the necessities of life that you lived on in 1944 than it was in 1943?

A In 1944 it was worse.

Q Much worse, wasn't it?

A Yes.

Q And didn't it continue to grow worse in the early part of 1945 prior to surrender?

A Yes.

LIEUTENANT MC CULLOUGH: We are about two-thirds the way through on cross-examination. I wonder if the Commission desires to take a short recess.

COLONEL HAMBY: The Commission will take a short recess.

(Short recess.)

COLONEL HAMBY: The Commission is now in session.

LIEUTENANT MC CULLOUGH: I want to remind you that since the recess you are still under oath, Dr. Caram.

BY LIEUTENANT MC CULLOUGH:

Q When did you first report these atrocities to Colonel Tozuka?

A The nearest that I can recall was on September 1943.

Q Do you recall the first meeting that you had with General Kono?

A I remember more or less it was in the last part of September 1943.

Q How many formal calls passed between you and General Kono during the occupation?

A I went to see him in his office to complain against the atrocities of his soldiers done over civilians at Iloilo in September 1943, but I went to see him also for other matters on one or two occasions.

Q You stated also that General Kono and Colonel Watanabe alternated the command while Kono was away from the island. How do you know that?

A It was told to me by Colonel Watanabe that when General Kono was absent in the province of Iloilo he, Colonel Watanabe, was the one who took over, who assumed command.

Q I believe you stated that you saw General Kono and Colonel Watanabe at San Miguel, is that correct?

A I saw them, not together; I saw first Colonel Watanabe in San Miguel and General Kono in Oton, and on other occasions I saw General Kono in San Miguel; they were alternating.

Q Did you also accompany them on that inspection trip?

A The Japanese?

Q Yes.

A I never accompanied them.

Q Did you ever accompany either Kono or Colonel Watanabe on any trip out of Iloilo City at any time during the occupation?

A On a punitive campaign?

Q No, no, on any kind of trip, pleasure trip or otherwise.

A No pleasure trip; no, I did not. I was afraid to go with them because I know the guerrilla were watching them.

Q I believe that you said that you knew Colonel Tozuka, is that right?

A Yes, I knew him very well.

Q On occasion did you ever have drinks with him?

A Well, when they invite us to banquets they used to offer us drinks, beer, and they have the custom that when the glass is not yet empty they fill it and you have to drink whether you like it or not, and they got drunk and we got drunk also, all of us.

Q Isn't it a fact that you used to go over to his headquarters and have drinks with him on occasion?

A When I am invited, but I never go there if I am not invited.

Q Were you ever afraid of him as being the "Terror of China" that you referred to a moment ago?

A Well, that reputation was announced to us by the Director of the Military Administration, Lieutenant S. Mihara, that the terror of China, Colonel Tozuka, has just arrived in Iloilo to stamp out the guerrilla activity and to kill all Filipinos that may help the guerrilla against the Japanese. We were warned by Lieutenant S. Mihara to be alert and to be careful, and that our necks were in danger because the terror of China has no mercy to anybody; and that was Colonel Tozuka.

Q But you weren't afraid of him as being the "Terror of China" when you would go over to his quarters and have drinks with him on various occasions, is that correct?

A When I was invited I had to go and drink because he got drunk; I got drunk also. We get drunk all of us.

Q Are you now under charges as a collaborator?

A No, sir.

Q Have you ever been investigated as a collaborator suspect?

A By the C.I.C. I was requested to give my report and I give it and they did not present any complaint to me and the C.I.C. told me whenever I wanted to go I am free, no charge against me.

LIEUTENANT MC CULLOUGH: That's all on cross-examination.

CAPTAIN YARD: We have nothing further, sir.

COLONEL HAMBY: Questions by the Commission?

The witness may be excused.

(Witness excused.)

CAPTAIN YARD: Sir, may this witness be excused to leave Manila?

COLONEL HAMBY: He may.

CAPTAIN YARD: Sir, we have nothing further in rebuttal. That concludes the prosecution's case.

LIEUTENANT MC CULLOUGH: Sir, the witness, Nakamura, whom we contemplated at one time using in this case, we have decided not to use. Therefore, the defense rests at this time. We have nothing further in the way of evidence to present to the Commission.

COLONEL HAMBY: Does the prosecution care to make a closing argument this afternoon?

CAPTAIN YARD: Yes, sir. We will be prepared to make our closing argument this afternoon.

LIEUTENANT MC CULLOUGH: The defense also will be ready to make its closing argument at that time. We wonder if it is agreeable to recess at this time until 1400, at which time our closing arguments will be made.

COLONEL HAMBY: The Commission will recess until 1400 today.

(The Commission recessed at 1130 hours, 30 April 1946.)

AFTERNOON SESSION

The Commission convened, pursuant to recess, at 1400, 30 April 1946.

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: Sir, may the record show that all members of the Commission are present, the accused together with defense counsel and his personal interpreter, and members of the prosecution staff are present.

Does the Commission desire the defense counsel to make his closing argument first?

COLONEL HAMBY: Proceed.

LIEUTENANT WATERS: May it please the Commission:

This case has been a long and arduous task for all concerned and what I have to say will not take long nor add much to the length of the case.

We have heard a long line of prosecution witnesses who have testified with more or less accuracy as to the commission of certain atrocities by the Japanese on the Island of Panay.

That there were atrocities committed cannot be denied; that civilians were tortured and killed cannot be denied, and that these crimes were perpetrated by members of the Imperial Japanese Army to some extent cannot be denied. To deny them and to argue that they did not happen would be to insult the intelligence and reason of those who have heard the testimony.

But, gentlemen, you must not allow yourselves to be swayed by the magnitude of acts that were committed. You must not lose sight of reason. The greatness of the crime has no bearing upon the guilt or innocence of the party accused unless, like lesser mortals, you allow prejudice to overrule your better judgment. It is all too common a human fallacy

to believe that which we desire to believe rather than that which is true.

The truth is that, of all the witnesses which the prosecution has paraded before us in this case, only two have placed General Kono at the scene or with knowledge of any of the many atrocities stated in the forty-nine specifications. These two placed him at the scene of only one of the crimes alleged. Let's look at these two witnesses in the light of their own testimony. The two have much in common. Both are being held in civilian-internment camps awaiting charges before the People's Court. Both were collaborators with the Japanese and both are traitors to their country. They have one other thing in common and that is that their credibility is extremely doubtful, for a traitor is the most despicable of liars. To convict a person upon the testimony of two traitors alone would be to deny the principles that gave our nation birth and have guided us so long:

First, that <u>all</u> men are born and created equal. That means that you should not and must not find General Kono guilty upon any lesser degree of evidence than you would if he were a fellow American.

Second, that a defendant in a criminal charge is entitled to the benefit of a reasonable doubt. That means not only the doubt as to his guilt or innocence but to every reasonable doubt that may arise during the trial of the case. A reasonable doubt has been defined in jurisprudence as that doubt which an ordinary prudent man would have.

And third, it means that a man is entitled to a "fair, impartial and speedy" trial.

That the accused in these war crimes trials is given a speedy trial cannot be denied or questioned and we of the defense would be the last to raise the question. But whether the trials are fair and impartial remains for posterity to judge. For that reason, if for no other, it is necessary that there be no least-lingering doubt, no least suspicion, that the accused was not given a fair and impartial trial. It must be fair and impartial not only in the legal sense and in the equitable sense but by any other measure that may be applied. It means that we must lay aside all our prejudice engendered by the propaganda of war and the creation of hatred and desire to kill our fellow man. We must judge General Kono by such intelligence and reason as we possess and not by our emotions. We must follow the principle that a thousand guilty may escape rather than allow one solitary innocent to suffer.

It is the essence of military organization that only that which is ordered should be performed and that those things which are not ordered should not be performed. It is established in the case before this Commission that General Kono did not issue any orders for atrocities to be committed and that his orders called only for action against guerrillas.

Gentlemen, all a commander can do is point out the military objective in clear, unequivocal language and trust to the conscience and responsibility of his subordinate commanders to carry out those orders and nothing further. If his trust was misplaced, then he is more sinned against than sinner. For who of us who has been in a command

position followed the example of the Caliph of Bagdag and walked among his subordinates unheralded and unknown to test them and to discover the wants and complaints of the people?

In closing I wish briefly to go over the charge in this case. (Reading.)

"That Takeshi KONO, then a Lieutenant General of the Imperial Japanese Army, did, on the dates and at the places set forth in the Specifications hereto attached, unlawfully disregard and fail to discharge his duties in controlling the operations of members of his command by permitting them to commit brutal atrocities and other high crimes against the people of the United States and the Philippines; and he, Takeshi KONO, thereby violated the laws of war."

That, gentlemen, is open to a lot of question and to a lot of doubt. A man may not permit that which he does not know about. He cannot deny, and he cannot punish, unless he is well aware of what has been done, what is being done, and what shall be done.

To give the accused in these war-crime trials less than a fair and impartial trial, to deny them the benefit of a reasonable doubt, to find them guilty upon a lesser degree of evidence than we would a fellow American -- is to lose the war that we fought so bitterly to win. For this was a war of principles, we said, and if we adopt those principles that we fought against, then in judging the vanquished we suffer a greater loss in the peace than all the losses on all the battlefields since man first pulled himself out of the primeval ooze and invented principles as an excuse to kill his fellow man. For to do so is to deny those principles we said we fought for not only to the

vanquished enemy but to ourselves and, like Judas, brand ourselves as liars and hypocrites and admit to our everlasting shame that we did not fight for right and justice.

It rests with you, gentlemen, as to what opinion posterity will have and what conclusions they will reach. These cases may become a monument to American fairness in the administration of justice or -- and may Heaven forbid -- they may become a bar sinister upon our escutcheon and take their place with the witch-hunt cases of Massachusetts.

The defense rests its case in your hands, feeling that you are honorable men.

I thank you.

CAPTAIN YARD: May it please the Commission, in its opening the Government stated that it would produce testimony in support of the charge and specifications of this case that would resolve itself into a story of murder -- I believe we said, "mass murder, shocking and horrifying almost beyond the possibility of comprehension " -- and that the responsibility for this murder would rest with this accused.

What have we done in support of those statements? I don't intend to go specifically into each witness' testimony. The defense counsel admits that the atrocities were committed, that they were committed by members of the Imperial Japanese Army. But it is important how they were committed, where they were committed, by whom they were committed, and when they were committed.

Thirty-nine witnesses testified in this case and the substance of their testimony unquestionably is a story of murder in every form that the diabolical mind can possibly conjure up. You have heard of murder by beheading, by bayoneting, by stabbing. You have heard of small children being taken by the ankles and their heads bashed to the ground until they were dead, and in some cases beaten to death on the already-dead bodies of their parents. The members of the Commission have even had a case of crucifixion related to them.

You have listened to torture by burning, the water cure, by beating, abuse of females. You have seen thirty-nine witnesses, many of whom revealed the scars on their bodies where an attempt was made on their lives. But it

was willed that they should live and testify before you. Saber wounds on the back of their necks, the bayonet wounds around the breast of Adela Eslacin, the bullet holes in the chest of Remedios Nacanaynay. And will you forget the stump where the right hand of Bernardita Naman should have been?

By whom were these committed? By some scattered renegade band of Japanese soldiers off on a frolic of their own, drunk on a Saturday night, or in some lustful orgy that could not properly be charged to any commanding officer? You heard these same thirty-nine witnesses go right down through the list of officers in the Kono command and unequivocally identify them. Mark you: for the most part, officers, officers who were engaged on a planned, ordered combat operation.

I never was quite able to figure why we spent so much time talking about Kengo Watanabe, the man who was always there, and Lieutenant Colonel Hidemi Watanabe, the little man who was never there. Perhaps it was the theory of the defense that it might cast a doubt in your mind that Kengo Watanabe could suddenly assume the proportions of a superman and be every place on the Island of Panay at the same time. Well, maybe to General Kono, Kengo Watanabe was the Peck's Bad Boy of his command. And along that line we submit that after this monster whom no one liked, including his own commanding officer, and who even a lieutenant general could not get out of his command, had done all these things that were so shocking and so horrifying, he was brought in, given a nice job as adjutant, and then, although we don't like to raise any inference that there is a

possible comparison here with the Bible, nevertheless he was told in effect, "Well done, thou good and faithful servant. We'll promote you to major."

But maybe Severo Posadas thought Fujii was the gangster on Panay. Maybe Tomas Digohermano, who testified here, thought there was no equal to Kuwano. Or Felizberto Grijalvo never saw a man like Otsuka when it came to killing. And Naman, Nacanaynay, and Eslacin would probably shudder in terror if Makita or Itai walked into the room. And Margarita Rodriguez and Pablo Poblador were terrified at the thought of Motoki when he took the four boys out and beheaded them. And so on as to Shin, and Colonel Watanabe. Perhaps the parents of that American flyer think that General Kono is the worst killer in the world. Unquestionably that blind girl that was left hanging in the tree with the cold mountain rain pouring down on her, if she could have seen Kumai, there would be no question in her mind as to what she would think Kumai was.

Perhaps the whole organization was a gang of Kengo Watanabes. Certainly the testimony of these witnesses -- mark you, who were there and who saw, and who said, "We saw approximately twenty-five hundred people massacred" -- that is what their testimony indicated, members of the Commission.

We submit that the finest, highest degree of testimony that could be offered to a Commission was submitted in this case: eyewitness accounts. And then the superlative in corroboration was furnished in the testimony of the Japanese witnesses themselves. There is no question that the punitive expeditions were carried out. The only place

where they, the defense witnesses, failed to corroborate the witnesses of the prosecution is in the actual fact of killing itself, and it is unlikely that they would get up here and admit that on planned, ordered operations they executed these people. They were always there but they did nothing. And along that line, again, it is shocking and ridiculous that this Commission would be asked to believe that which General Kono in his own testimony said, "I never heard, while I was in command of troops on Panay Island, that a single civilian had been unlawfully killed."

Where did these crimes occur? Was it some isolated remote sitio, or some unnamed locale back in the mountains of Panay Island where the atrocities occurred? Again referring to the testimony of the thirty-nine witnesses, it most closely resembles a geography lesson in the most populated areas on Panay Island and included Sara, Ajuy, Samponongbolo, Agbobolo, Ticongcahoy, Gubaton, Gibato, Batan, Balete, Banga, Altavas, Despojols, Libacao, San Jose, Iloilo, Tigbauan, Miagao. And those are the atrocities that this officer who was noted for his efficient command, for his ability as a disciplinarian, did not know about!

When did it occur? Was it something that happened on the night of September 21 and never again, or simply two or three different times? We submit that, beginning August 1943, it reached its peak in September, and then on in October, November, December and through 1944. What is the purpose of recalling this to the Commission's attention again? Because the theory of the case is simply this: that to charge this accused with command responsibility, the Government had the burden of showing that these offenses

occurred, first, through members of his command and over such an area and in such a pattern, and over such a period of time, that if he was exercising the control incumbent upon a commanding officer, and to use again the oft-quoted words: "If he didn't know he was living in a vacuum," he didn't want to know. I submit to you, in view of what happened here, with no intermediate command between Kono's headquarters and the Tozuka headquarters, it is sheer absurdity to say that he didn't know.

Then this morning, Dr. Caram. We didn't need Dr. Caram, for we submit to the reasonableness of this Commission that this commanding general, right on the spot, who issued the orders, received the battle reports, held the unit commanders' meeting, had his trusted assistant on the spot, and conducted inspection trips -- he didn't know! We submit the facts proved to the contrary. However, we called Dr. Caram to show that the accused had actual knowledge.

Dr. Caram said, "I received these reports of the people being killed. I told him. I started, first, by writing to the military administration and I went to Tozuka, and Tozuka admitted the killings and said he would do what he could, he would order his soldiers to stop." He didn't go to Tozuka once: many times. He went to Lieutenant Colonel Hideni Watanabe, who was in command when Kono was not there, and he complained to him. And he went to Kono. "Yes," he said, "I went to Kono just once. It was too hard to see him."

We believe we have met the burden. We have presented the finest type of evidence, insofar as its reliability is concerned. We have met the legal requirements of command

responsibility. And then, completely to typify this accused, we went to Negros Island and we picked the incident of the American flyer. Now, defense counsel said, "Are you going to convict this accused on the unreliable testimony of these two traitors?" I am inclined to agree with counsel as to the color of their background. Maybe they are guilty; maybe they are not. But we submit, with the corroboration furnished by defense witnesses, their testimony again stands up undisputed except for the fact of the killing where the shoe would hurt this accused.

They said the American was a survivor of the plane crash and he was brought over and he was questioned -- and he was executed. Witnesses for the accused get up and they say there was a plane crash; there was a survivor; he was brought over and he was questioned, and he was executed. And I couldn't believe my ears when I finally heard that, again, it was Kengo Watanabe who did it -- that no-good character, Major Kengo Watanabe, who isn't here today to say, "I didn't do it." Even if General Kono was not right on the spot where it happened, I again submit to the reasonableness of this Commission that with the closeness of the headquarters of Kono, the fact that this was part of his headquarters, he was again living in a vacuum or did not want to know it, or he is a plain, unmitigated liar if he says he didn't know that an event such as that was happening.

What is there to be done? What can be done? I submit there is not a scintilla of evidence that would operate in mitigation of the crime with which this accused is charged.

I submit that you can comb the record and you will not find one mitigating factor upon which you can seize to say, "He did it, but." There is no "but" in the record.

Members of the Commission, I say, for the sake of the thousands on Panay Island, on behalf of the witnesses who testified in this case, and the countless hundreds, whose names we do not know, who died at the hands of the accused's men, that if there ever was a case where justice had to be worked, this is it; and on behalf of the prosecution and the Government I earnestly urge as sincerely as I can possibly muster the request, that this accused be found guilty and sentenced to death by hanging.

COLONEL HAMBY: Does the defense have anything further?

LIEUTENANT MC CULLOUGH: Nothing further, sir.

COLONEL HAMBY: Does the prosecution have anything further?

CAPTAIN YARD: Nothing further, sir.

COLONEL HAMBY: The Commission will recess until 1000 hours in the morning, at which time it will render its decision.

(The Commission adjourned at 1430 hours, 30 April 1946.)

(205J)

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Armed Forces
Western Pacific

UNITED STATES OF AMERICA	
vs	PUBLIC TRIAL
TAKESHI KONO	

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VOLUME XII

PAGES 885 TO 888

MANILA, P. I.

DATE: 1 MAY 1946

COPY NO. 3

CERTIFICATION

This certifies that this volume is a part of the proceedings of the Military Commission appointed by Paragraph 21, Special Orders No. 85, Headquarters, United States Army Forces, Western Pacific, dated 12 April 1946, in the trial of the case of the United States of America v. Takeshi Kono.

Dated 7 May 1946

WILLIAM R. HAMBY
Colonel, CAV
President of Commission

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Armed Forces
Western Pacific

UNITED STATES OF AMERICA	
vs	PUBLIC TRIAL
TAKESHI KONO	

Court No. 2-B
High Commissioner's Residence
Manila, P. I.
1 May 1946

Met, pursuant to adjournment, at 1015 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL WILLIAM R. HAMBY, CAV, President and Law Member
COLONEL JOHN L. GOFF, CAC
COLONEL JOSEPH H. WARREN, INF
LIEUTENANT COLONEL JOHN A. CHASE, (CMP) FA
CAPTAIN JACK ELLINGSON, CMP

APPEARANCES:

FOR THE PROSECUTION:
(AS PREVIOUSLY NOTED.)

FOR THE DEFENSE:
(AS PREVIOUSLY NOTED.)

INTERPRETERS FOR THE COMMISSION:
(AS PREVIOUSLY NOTED.)

REPORTERS FOR THE COMMISSION:

ARNOLD COHEN
WILLIAM COHEN

I N D E X

GENERAL

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Sentencing	886

P R O C E E D I N G S

The Commission convened, pursuant to adjournment, at 1015 hours, 1 May 1946, at Court No. 2-B, High Commissioner's Residence, Manila, P. I.

COLONEL HAMBY: The Commission is now in session.

CAPTAIN YARD: Sir, may the record show that all members of the Commission are present, the accused with defense counsel and the accused's personal interpreter, and members of the prosecution are present.

COLONEL HAMBY: Does the prosecution have anything to offer at this time?

CAPTAIN YARD: The prosecution has nothing to offer, sir.

COLONEL HAMBY: Does the defense have anything to offer?

LIEUTENANT MC CULLOUGH: Neither does the defense, sir.

COLONEL HAMBY: At this time the Commission desires to take this opportunity to compliment the members of the prosecutin staff on the excellent presentation of its case and on the tremendous amount of work the staff had to perform to prepare its case. It further desires to compliment the defense staff for the presentation of its case, knowing full well that defense counsel had almost as much work and preparation as did the prosecution.

This Commission has been greatly impressed with the efficiency of the interpreters: the Japanese-American interpreters, Nisei, the Visayan interpreters, and the Spanish interpreters. It is well known that an interpreter has a difficult job in translating and transposing one

language to another for an official court record. The interpreters have done an excellent job.

The reporters also have performed efficiently and have impressed this Commission as being highly trained. They know their job and have had a voluminous record to report and transpose and put on paper. They have done so with only a very few minor errors. They are to be congratulated upon their work.

The military police, by their performance of duty, their attention to detail, their appearance, and their soldierly qualities, have made a great impression upon the Commission and the spectators in the Commission room.

It is the desire of the Commission that the foregoing be made a matter of record.

At this time the Commission will render its decision. Will the defense, the accused and interpreters come forward.

(Through interpreter) Takeshi Kono, the Commission by secret written ballot, all of the members present concurring in each finding, finds you:

Of all the specifications: Guilty, with the following exceptions:

Of Specification 10: Guilty, except the words "about 100," substituting therefor the words "about 54."

Of Specification 19: Guilty, except the words "about 150," substituting therefor the words "about 129."

Of Specification 21: Guilty, except the words "an unascertained number of," substituting therefor the words "about 40."

Of Specification 22: Guilty, except the

words "about 26," substituting therefor the words "about 18."

Of Specification 27: Guilty, except the words "about 50," substituting therefor the words "about 37."

Of Specification 31: Guilty, except the words "about 100," substituting therefor the words "between 80 and 300.

Of Specification 34: Guilty, except the figures "300," substituting therefor the figures "200."

Of Specification 39: Guilty, except the words "an unascertained number of," substituting therefor the words "about 86."

Of Specification 43: Guilty, except the words "Tomas Novico."

Of Specification 44: Guilty, except the word "Cagbang," substituting therefor the word "Frantilla."

Of Specification 45: Guilty, except the words "an unascertained number of," substituting therefor the word "seven."

Of Specification 47: Guilty, except the words "torture, mistreat and kill an unascertained number of," substituting therefor the words "kill 12."

Of the excepted words in Specifications 18, 19, 21, 22, 27, 31, 34, 39, 43, 44, 45, and 47, Not guilty; of the substituted words therein, Guilty.

Of the Charge: Guilty.

The Commission by secret written ballot, all of the members present concurring in the sentence, does hereby sentence you to be hanged by the neck until dead.

The military police will remove the prisoner.

The Commission will adjourn sine die.

(The Commission adjourned sine die at 1030 hours, 1 May 1946.)

AUTHENTICATION OF RECORD

The foregoing 888 pages, contained in Volumes I through XII, inclusive, together with Prosecution's Exhibits 1 through 29, inclusive, and Defense's Exhibit A, are hereby certified as the record of the proceedings of the Military Commission appointed by Paragraph 21 of Special Orders No. 85, Headquarters, United States Army Forces, Western Pacific, dated 12 April 1946, in the trial of the case of the United States of America v. Takeshi Kono.

Dated 7 May 1946.

W. R. Hamby
WILLIAM R. HAMBY
Colonel, CAV
President of Commission

This acknowledges that the above-described record was submitted to defense counsel prior to being certified by the President of the Commission.

Clarence L. Waters
CLARENCE L. WATERS
1st Lieutenant, CMP
Defense Counsel

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

GHQ, SCAP, LEGAL SECTION, MANILA BRANCH 2065
(Reporting Office)

File Number P-47 Date of Report 3 January 1947

Title of Case U. S. A. vs. Seiichi ONISHI, Norikumi YAMASAKI, Masanori SUGIMOTO, Yoshinori UEHARA, Tatsuma TAGAMI, Takami ONO, Kazumi NOJIMA, Masayoshi MURATA, Masashi MASUYAMA, Yukio KAWANO, Hisao KAWABE, Wataru ABE

PART A

1. Names and Nationalities of Accused:

Seiichi ONISHI	- Japanese	Hisao KAWABE	- Japanese
Norikumi YAMASAKI	- Japanese	Wataru ABE	- Japanese
Masanori SUGIMOTO	- Japanese		
Yoshinori UEHARA	- Japanese		
Tatsuma TAGAMI	- Japanese		
Takami ONO	- Japanese		
Kazumi NOJIMA	- Japanese		
Masayoshi MURATA	- Japanese		
Masashi MASUYAMA	- Japanese		
Yukio KAWANO	- Japanese		

2. Nature, Place and Date of Offense:

Murder, cruelty and torture, other assaults and mistreatments of Filipino civilians, at or near Barili, Cebu Province, Philippine Islands, on or about 2 September 1944.

3. Names and Nationalities of Victims:

Procopio Causin	- Filipino	Manuel Roa	- Filipino
Maria Noel Causin	- Filipino	Soledad Roa	- Filipino
Teresa de la Torre	- Filipino	Martin Deloraso	- Filipino
Tomas del Valle	- Filipino	Teodoro Estrada	- Filipino
Clemencia del Valle	- Filipino	Filomeno Gonzales	- Filipino
Filomena del Valle	- Filipino	Aurelio Sasil	- Filipino
Josefa del Valle	- Filipino	Angelo Yap	- Filipino
Norma del Valle	- Filipino	Margarita Aguilar	- Filipino
Justino Paras	- Filipino	Asuncion del Valle	- Filipino
Demetrio Roa	- Filipino	Lourdes del Valle	- Filipino

Also 7 identified Filipino civilians and an unascertained number of unidentified Filipino civilians.

4. Probable Place and Date of Trial:

High Commissioner's Residence, Manila, Philippine Islands, 8 April 1946.

PART B

5. Place and Date of Trial: High C
Philippine I

WD AGO Form R-5392
21 June 1946 - Arraig

Trial

(Over)

Inclosure 2 to WD Letter (AG [illegible] 000.5

6. Judgment and Sentence (Relate to Specifi

Masanori SUGIMOTO, Masayoshi MURATA, Masa
Hisao KAWABE and Wataru ABE - 10 April 194

Seiichi ONISHI, Norikumi YAMASAKI, Yoshino
Takami ONO and Kazumi NOJIMA - 8 April 19
of Prosec

PART C

7. Action of Reviewing Authority (Specify au ority and date and relate to specific accused) -

Masanori SUGIMOTO, Masayoshi MURATA, Masa hi MASUYAMA, Yukio KAWANO, Hisao KAWABE and Wataru ABE - 7 May 1946, sentence approved, execution withheld by Lieutenant General W. D. Styer, C. G., AFWESPAC, pending action of Confirming Aut ority.

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

Masanori SUGIMOTO, Masayoshi MURATA, M. ashi MASUYAMA, Yukio KAWANO, Hisao KAWABE and Wataru ABE - 22 May 1946, s ntenc rmed and ordered executed by General of the Army, Douglas M rthur, SCAP, under the supervision of, and at the time and pla designated by the C. G., AFWESPAC.

9. Date and Place of Execution of Sentence:

Masayoshi MURATA and Masanori SUGIMOTO - 14 June 19 , Laguna Province, Philippine Islands.

Wataru ABE, Hisao KAWABE, Yukio KAWANO and Masashi MASUYAMA, 20 June 1946, Laguna Province, Philippine Islands.

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the t (Part B) and at the completion of final actio in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. D.

25-89621-300

6. Judgment and Sentence (Relate to Specifi

Masanori SUGIMOTO, Masayoshi MURATA, Masa
Hisao KAWABE and Wataru ABE - 10 April 194

Seiichi ONISHI, Norikumi YAMASAKI, Yoshino
Takami ONO and Kazumi NOJIMA - 8 April 19
of Prosec

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused) -

Masanori SUGIMOTO, Masayoshi MURATA, Masashi MASUYAMA, Yukio KAWANO, Hisao KAWABE and Wataru ABE - 7 May 1946, sentence approved, execution withheld by Lieutenant General W. D. Styer, C. G., AFWESPAC, pending action of Confirming Authority.

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

Masanori SUGIMOTO, Masayoshi MURATA, Masashi MASUYAMA, Yukio KAWANO, Hisao KAWABE and Wataru ABE - 22 May 1946, sentence confirmed and ordered executed by General of the Army, Douglas MacArthur, SCAP, under the supervision of, and at the time and place designated by the C. G., AFWESPAC.

9. Date and Place of Execution of Sentence:

Masayoshi MURATA and Masanori SUGIMOTO - 14 June 19[illegible], Laguna Province, Philippine Islands.

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25-89621-300

Supplementary doc (2063)

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, ESC, SCAP (TOKYO)
(Reporting Office)

File Number Y - 265 Date of Report 23 January 1948

Title of Case U. S. vs Masayuki MURATA

PART A

1. Names and Nationalities of Accused

Japanese: Masayuki MURATA

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

Yokohama, Honshu, Japan

12 January 1948 - 12 January 1948

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

Guilty - Four years imprisonment at hard labor.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

Abeyance ?

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

File Number T - 265 Date of Report 16 September 1947

Title of Case U. S. vs Masayoshi MURATA

PART A

1. Names and Nationalities of Accused
Japanese: Masayoshi MURATA

2. Nature, Place and Date of Offense
Beating, abusing, gross mistreatment.

Ofuna Prisoner of War Camp, Ofuna, Honshu, Japan

July 1944 - November 1944

3. Names and Nationalities of Victims
American:
William McFerren, Jr.
George E. Brown

4. Probable Place and Date of Trial

Yokohama, Honshu, Japan 1 October 1947

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

(206 J)

Set II

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

UNITED STATES OF AMERICA -vs- MASANORI SUGIMOTO MASAYOSHI MURATA MASASHI MASUYAMA YUKIO KAWANO HISAO KAWABE WATARU ABE	ARRAIGNMENT AND PUBLIC TRIAL

VOLUME I

Pages 1 to 80, incl.

MANILA, P. I.

DATE 8 April 1946

COPY NO. 4

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL
APO 707

7 May 1946

In the foregoing case of the United States vs. Sergeant Major Masamori SUSUMOTO, Corporal Masayoshi MIHATA, Leading Private Masashi MASUYAMA, Superior Private Yukio KAWANO, Superior Private Hisao KAWABE and Superior Private Wataru ABE, all of the Imperial Japanese Army Forces, the sentences are approved. Pursuant to paragraph 2, First Indorsement, General Headquarters, United States Army Forces, Pacific, 26 January 1946,to Letter, General Headquarters, Supreme Commander for the Allied Powers, File AG 000.5 (26 Jan 46) LS, Subject: Trial of Seiichi OKISHI et al, 26 January 1946, the execution of the sentences is withheld pending the action of the Supreme Commander for the Allied Powers.

W. D. STYER
Lieutenant General, United States Army
Commanding

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL

APO 707

GSJA 000.5

SUBJECT: Execution of Abe, Kawabe, Kawano and Masuyama.

TO : Commander-in-Chief, United States Army Forces, Pacific, APO 500.
Attention: Theater Judge Advocate.

Wataru Abe, Hisao Kawabe, Yukio Kawano and Masashi Masuyama were each executed upon 20 June 1946 pursuant to AFPAC Military Commission Orders Number 20, dated 22 May 1946.

FOR THE COMMANDING GENERAL:

I cc to
Legal Section, SCAP (Manila Branch)
Executive Officer, War Crimes Trials

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL

GSJA 000.5

APO 707
17 June 1946

SUBJECT: Execution of War Criminals Uehara, Ohno, Sugimoto and Murata.

TO : Commander-in-Chief, United States Army Forces, Pacific, APO 500.
(Attention: Theater Judge Advocate)

Japanese war criminals Zenichi Uehara, Hajime Ohno, Masanori Sugimoto and Masayoshi Murata, were each executed upon 14 June 1946 pursuant to AFPAC Military Commission Orders Number 19, dated 15 May 1946 and Military Commission Orders Number 20, dated 22 May 1946.

FOR THE COMMANDING GENERAL:

1 cc to
Legal Section, SCAP (Manila Branch)
Exec Off, War Crimes Trials

HEADQUARTERS
PHILIPPINE DETENTION AND REHABILITATION CENTER
APO 75

20 June 1946

Memorandum to: Commanding General, AFWESPAC, APO 707.

Subject : Report on Execution of Japanese.

1. In compliance with paragraph 4 of your SECRET Memorandum to Commanding General, Base X and Adjutant General, AFWESPAC dated 11 February 1946, the following report is submitted:

a. As ordered by your SECRET letter, 15 June 1946, Subject: Execution of Sentence, GSJA 000.5 the following named Japanese were executed by hanging at this Center on 20 June 1946 at the hours indicated below:

WATARU ABE	Trap sprung at 2000, pronounced dead at 2012.
HISAO KAWABE	Trap sprung at 2014, pronounced dead at 2025.
YUKIO KAWANO	Trap sprung at 2027, pronounced dead at 2035.
MASASHI MASUYAMA	Trap sprung at 2037, pronounced dead at 2049.

b. The condemned prisoners were accompanied to the place of execution by a priest of his faith and an interpreter.

c. The letter, ordering the execution, was read to the prisoners at 1745 20 June 1946.

d. The behaviour of the condemned men was calm and stoical.

e. The condemned men made the following final statements:

WATARU ABE - No statement.

HISAO KAWABE - "As a Japanese I am proud to die for the causes of the Emperor."

YUKIO KAWANO - No Statement.

MASASHI MASUYAMA - "The Military Commission should have trials with more consideration for justice."

f. The bodies of the condemned and the persons of the priest and interpreter left this Center for return to the Commanding Officer, POW No. 1 at 2055 hours, 20 June 1946.

g. Strict compliance with all of your instructions contained in the memorandum and letters referred to above was observed, and all matters proceeded expeditiously.

JOHN H. FONVIELLE
Colonel, CAC
Commanding

HEADQUARTERS
PHILIPPINE DETENTION AND REHABILITATION CENTER
APO 75

14 June 1946.

Memorandum To: Commanding General, AFWESPAC, APO 707.

Subject : Report on Execution of Japanese.

1. In compliance with paragraph 4 of your SECRET Memorandum to Commanding General, Base X and Adjutant General, AFWESPAC, dated 11 February 1946, the following report is submitted:

a. As ordered by your SECRET Letter, 11 June 1946, Subject: Execution of Sentence, GSJA 000.5, the following named Japanese were executed by hanging at this Center on 14 June 1946 at the hours indicated below:

ZENICHI UEHARA	Trap sprung at 2000, pronounced dead at 2015.
HAJIME OHNO	Trap sprung at 2019, pronounced dead at 2031.
MASANORI SUGIMOTO	Trap sprung at 2035, pronounced dead at 2047.
MASAYOSHI MURATA	Trap sprung at 2051, pronounced dead at 2103.

b. The condemned prisoners were accompanied to the place of execution by a priest of their own faith and an interpreter.

c. The Letter ordering the execution was read to the prisoners at 1745 hours, 14 June 1946.

d. The behaviour of the condemned men was calm and stoical.

e. The condemned men made the following final statements:

ZENICHI UEHARA -- I express my gratitude to the U.S. Army and especially the officers and guards during my stay in the Lupow Stockade. I appeal from the bottom of my mind to the Commission of War Criminal Trials that it will have more sympathy for our subordinate officers and soldiers who are on trial one after another.

HAJIME OHNO -- To the findings and charges it seems probable that some other person by the name of Ohno might have committed such crimes, but from this time on I hope that should not be any mistakes in person who really committed the crimes. I repeat that the persons who committed such crimes must be found, and the innocent not punished for these crimes.

MASANORI SUGIMOTO -- I am a non-com and in the battlefields non-coms just get orders from their superior and we do not have any power of executing anything without superior orders. I hope that the high ranking officers are the ones to be arraigned, but not the non-coms.

C O P Y

Ltr, Hqs, Phil Detn & Rehab Ctr, APO 75, dtd 14 Jun 46, Subject: Report on Execution of Japanese, cont'd.

MASAYOSHI MURATA -- I concur with Sugimoto's statement.

f. The bodies of the condemned and the persons of the priest and interpreter left this Center for return to the Commanding Officer, POW #1 at 2108 hours, 14 June 1946.

g. Strict compliance with all your instructions contained in the Memorandum and Letters referred to above was observed, and all matters proceeded expeditiously.

JOHN H. FONVIELLE
Colonel, CAC
Commanding.

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL
APO 707

GSJA 000.5

SUBJECT: Execution of Sentence.

TO : Commanding Officer, Philippine Detention and Rehabilitation Center, APO 75.

1. Your attention is directed to Military Commission Orders No. 20, dated 22 May 1946, issued from General Headquarters, United States Army Forces, Pacific, confirming the sentence of death by hanging of Wataru Abe, Hisao Kawabe, Yukio Kawano, and Masashi Masuyama, adjudged in the case of Masanori Sugimoto, et al.

2. In accordance with Memorandum from Commanding General, AFWESPAC, directed to Provost Marshal, AFWESPAC, and Adjutant General, AFWESPAC, dated 15 March 1946, subject: "Instructions Governing the Execution of Japanese War Criminals", the Provost Marshal will transfer custody of said war criminals, at such time as you may designate and you are hereby directed to execute the sentence as to these condemned war criminals, stripped of uniform, decorations and other appurtenances signifying membership in the military profession, as follows:

Place of Execution:	Philippine Detention and Rehabilitation Center.
Time of Execution:	20 June 1946, at hours to be fixed by you.
Order of Execution:	Wataru Abe first; Hisao Kawabe second; Yukio Kawano third; Masashi Masuyama last.

3. The classification of this directive shall remain "SECRET" until one day after the date of execution, at which time it shall become "RESTRICTED."

W. D. STYER
Lieutenant General, United States Army
Commanding

1 Incl:
AFPAC MCO
No. 20

RESTRICTED

COPY

COPY

RESTRICTED

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL

APO 707

GSJA 000.5

SUBJECT: Execution of Sentence.

TO : Commanding Officer, Philippine Detention and Rehabilitation Center, APO 75.

1. Your attention is directed to Military Commission Orders No. 19, dated 15 May 1946, issued from General Headquarters, United States Army Forces, Pacific, confirming the sentence of death by hanging of Zenichi Uehara and Hajime Ohno, adjudged in the case of Masatoshi Fujishige et al.

2. Your attention is also directed to Military Commission Orders No. 20, dated 22 May 1946, issued from General Headquarters, United States Army Forces, Pacific, confirming the death sentence by hanging of Masanori Sugimoto and Masayoshi Murata, adjudged in the case of Masanori Sugimoto et al.

3. In accordance with Memorandum from Commanding General, AFWESPAC, directed to the Provost Marshal, AFWESPAC, and Adjutant General, AFWESPAC, dated 15 March 1946, subject: "Instructions Governing the Execution of Japanese War Criminals", the Provost Marshal will transfer custody of said war criminals, at such time as you may designate and you are hereby directed to execute the sentences as to these condemned war criminals, stripped of uniform, decorations and other appurtenances signifying membership in the military profession, as follows:

Place of Execution:	Philippine Detention and Rehabilitation Center.
Time of Execution:	14 June 1946, at hours to be fixed by you.
Order of Execution:	Zenichi Uehara first; Hajime Ohno second; Masanori Sugimoto third; Masayoshi Murata last.

4. The classification of this directive shall remain "SECRET" until one day after the date of execution, at which time it shall become "RESTRICTED".

W. D. STYER
Lieutenant General, United States Army
Commanding

2 Incls:
AFPAC MCO
Nos. 19 & 20.

GENERAL HEADQUARTERS
UNITED STATES ARMY FORCES, PACIFIC

Military Commission)
:
Orders No..... 20)

APO 500
22 May 1946

Before a Military Commission which convened at the High Commissioner's Residence, Manila, Philippine Islands, on 8 April 1946, pursuant to Letter Order, File AG 000.5 (5 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 5 December 1945, subject: Regulations Governing the Trials of Accused War Criminals; Letter Order, File AG 000.5 (26 Jan 46) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 26 January 1946, with indorsement thereto, subject: Trial of Seiichi Onishi, et al; and paragraph 17, Special Orders Number 80, Headquarters, United States Army Forces, Western Pacific, 5 April 1946, were arraigned and tried:

Sergeant Major Masanori SUGIMOTO, Corporal Masayoshi MURATA, Superior Private Wataru ABE, Superior Private Hisao KAWABE, Superior Private Yukio KAWANO, and Leading Private Masashi MASUYAMA, of the Imperial Japanese Army.

CHARGE: The following members of the Imperial Japanese Army Forces with their then designated and known titles: Sergeant Major Masanori SUGIMOTO, Corporal Masayoshi MURATA, Leading Private Masashi MASUYAMA, Superior Private Yukio KAWANO, Superior Private Hisao KAWABE, Superior Private Wataru ABE did, at the time and place hereinafter set forth, and during a time of war between the United States of America, its allies and Japan, willfully and unlawfully kill twenty-three Filipino civilians; rape and attempt to rape seven Filipino female civilians; beat and torture five Filipino civilians, in violation of the laws of war.

Specification 1: In that Masanori SUGIMOTO, Masayoshi MURATA, Masashi MASUYAMA, Yukio KAWANO, Hisao KAWABE, Wataru ABE, and other persons whose names are unknown, connected and acting with Japan, did, at or near Barili, Cebu, Philippine Islands, on or about 2 September 1944, during a time of war between the United States of America, its allies and Japan, willfully and unlawfully murder Procopio CAUSIN, Maria Noel CAUSIN, Teresa DE LA TORRE, Tomas DEL VALLE, Clemencia DEL VALLE, Filomena DEL VALLE, Josefa DEL VALLE, Norma DEL VALLE, Justino PARAS, Demetrio ROA, Manuel ROA, Soledad ROA, Martin DELORASO, Teodoro ESTRADA, Filomeno GONZALES, Aurelio SASIL, Angelo YAP, Margarita AGUILAR, Asuncion DEL VALLE, Lourdes DEL VALLE, Socorro DEL VALLE, Rosa Aguilar GONZALES, and Cristina ROA, all unarmed, defenseless, noncombatant Filipino civilians, by bayoneting, beheading and strangling them, in violation of the laws of war.

Specification 2: In that Masanori SUGIMOTO, Masayoshi MURATA, Masashi MASUYAMA, Yukio KAWANO, Hisao KAWABE, Wataru ABE, and other persons whose names are unknown, connected and acting with Japan, did, at or near Barili, Cebu, Philippine Islands, on or about 2 September 1944, during a time of war between the United States of America, its allies and Japan, abuse and mistreat seven Filipino girls and women; namely, Natividad del Valle PARAS, Margarita AGUILAR, Asuncion DEL VALLE, Lourdes DEL VALLE, Socorro DEL VALLE, Rosa Aguilar GONZALES, and Cristina ROA, and divers other persons, names unknown, by forcing upon them sexual indignities and by raping or attempting to rape them, in violation of the laws of war.

Specification 3: In that Masanori SUGIMOTO, Masayoshi MURATA, Masashi MASUYAMA, Yukio KAWANO, Hisao KAWABE, Wataru ABE, and other persons whose names are unknown, connected and acting with Japan, did, at or near Barili, Cebu, Philippine Islands, on or about 2 September 1944, during a time of war between the United States of America, its allies and Japan, willfully, unlawfully and brutally beat, torture and mistreat without cause Martin DELORASO, Teodoro ESTRADA, Filomeno GONZALES, Aurelio SASIL, and Angelo YAP, unarmed and noncombatant Filipino civilians, and other persons whose names are unknown, in violation of the laws of war.

PLEAS

By each accused: To all Specifications and the Charge: Not Guilty

FINDINGS

Masanori SUGIMOTO: Of Specification 1: Guilty, except the word, "beheading", of the excepted word, not guilty; Of Specification 2: Not Guilty; Of Specification 3: Guilty; Of the Charge: Guilty, except the words "rape and attempt to rape seven Filipino female civilians;", of the excepted words, not guilty.

Masayoshi MURATA: Of Specification 1: Guilty, except the word, "beheading", of the excepted word, not guilty; Of Specification 2: Guilty, except the words, "seven", "girls and women", "Margarita Aguilar, Asuncion Del Valle, Lourdes Del Valle, Socorro Del Valle, Rosa Aguilar Gonzales, and Cristina Roa and divers other persons, names unknown", "them", and "or attempting to rape them", substituting the word "one" for "seven", the word "girl" for "girls and women", and the word "her" for "them", of the excepted words, not guilty, and of the substituted words, guilty; Of Specification 3: Guilty; Of the Charge: Guilty, except the words, "and attempt to rape seven" and "civilians", substituting therefor respectively the words "one", and "civilian", of the excepted words, not guilty, and of the substituted words, guilty.

(MCO 20)

Wataru ABE: Of Specification 1: Guilty, except the word, "beheading", of the excepted word, not guilty; Of Specification 2: Not Guilty; Of Specification 3: Guilty; Of the Charge: Guilty, except the words "rape and attempt to rape seven Filipino female civilians;", of the excepted words, not guilty.

Hisao KAWABE: Of Specification 1: Guilty, except the word, "beheading", of the excepted word, not guilty; Of Specification 2: Not Guilty; Of Specification 3: Guilty; Of the Charge: Guilty, except the words "rape and attempt to rape seven Filipino female civilians;", of the excepted words, not guilty.

Yukio KAWANO: Of Specification 1: Guilty except the word, "beheading", of the excepted word, not guilty; Of Specification 2: Not Guilty; Of Specification 3: Guilty; Of the Charge: Guilty, except the words "rape and attempt to rape seven Filipino female civilians;", of the excepted words, not guilty.

Masashi MASUYAMA: Of Specification 1: Guilty, except the word, "beheading", of the excepted word, not guilty; Of Specification 2: Not Guilty; Of Specification 3: Guilty; Of the Charge: Guilty, except the words "rape and attempt to rape seven Filipino female civilians;", of the excepted words, not guilty.

SENTENCES

As to each accused: Death by hanging.

The sentences were adjudged 10 April 1946.

The following is the action of the reviewing authority:

"HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL
APO 707

7 May 1946

In the foregoing case of the United States vs. Sergeant Major Masanori SUGIMOTO, Corporal Masayoshi MURATA, Leading Private Masashi MASUYAMA, Superior Private Yukio KAWANO, Superior Private Hisao KAWABE and Superior Private Wataru ABE, all of the Imperial Japanese Army Forces, the sentences are approved. Pursuant to paragraph 2, First Indorsement, General Headquarters, United States Army Forces, Pacific, 26 January 1946, to Letter, General Headquarters, Supreme Commander for the Allied Powers, file AG 000.5 (26 Jan 46) LS, Subject: Trial of Seiichi ONISHI et al, 26 January 1946, the execution of the sentence is withheld pending the action of the Supreme Commander for the Allied Powers.

(MCO 20)

(signed) W. D. Styer
(typed) W. D. STYER
Lieutenant General, United States Army
Commanding"

The following is the action of the confirming authority:

"GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

APO 500
22 May 1946

In the foregoing case of Sergeant Major Masanori Sugimoto, Corporal Masayoshi Murata, Superior Privates Wataru Abe, Hisao Kawabe and Yukio Kawano, and Leading Private Masashi Masuyama, all of the Imperial Japanese Army, the sentences are confirmed and will be duly executed under the supervision of and at a time and place to be designated by the Commanding General, United States Army Forces, Western Pacific.

(signed) Douglas MacArthur
(typed) DOUGLAS MacARTHUR
General of the Army, United States Army,
Supreme Commander"

By command of General MacARTHUR:

PAUL J. MUELLER,
Major General, General Staff Corps,
Chief of Staff.

OFFICIAL:

B. M. FITCH,
Brigadier General, AGD,
Adjutant General.

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL
APO 707
7 May 1946

In the foregoing case of the United States vs. Sergeant Major Masazumi SUGIMOTO, Corporal Masayoshi MIHARA, Leading Private Masashi MASUYAMA, Superior Private Yukio KIKUCHI, Superior Private Hisao HAYASE and Superior Private Mitsuru ABE, all of the Imperial Japanese Army Forces, the sentences are approved. Pursuant to paragraph 2, First Indorsement, General Headquarters, United States Army Forces, Pacific, 26 January 1946, to Letter, General Headquarters, Supreme Commander for the Allied Powers, File AG 000.5 (26 Jan 46) LE, Subject: Trial of Seiichi OHISHI et al, 26 January 1946, the execution of the sentence is withheld pending the action of the Supreme Commander for the Allied Powers.

W. D. STYER
Lieutenant General, United States Army
Commanding

HEADQUARTERS AGH/WCC/jvd
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE STAFF JUDGE ADVOCATE

APO 707
30 April 1946

UNITED STATES -vs- MASANORI SUGIMOTO MASATOSHI MURATA MASASHI MASUYAMA YUKIO KAWANO HISAO KAWABE WATARU ABE	Place of Trial:	High Commissioner's Residence, Manila, P.I.
	Arraigned :	8 April 1946
	Tried :	8, 9 and 10 April 1946
	Sentenced :	10 April 1946

CHARGE

The accused, members of the Imperial Japanese Army Forces, did, at the times and place designated, during the time of war between the United States and Japan, wilfully and unlawfully kill twenty-three Filipino civilians, rape and attempt to rape seven Filipina civilians, and beat and torture five Filipino civilians, all in violation of the laws of war (R 12).

SPECIFICATIONS

Each of the following specifications alleges the accused and others, at or near Barili, Cebu, Philippine Islands, on or about 2 September 1944, in violation of the laws of war, did:

Specification 1: wilfully and unlawfully murder Procopio CAUSIN, Maria Noel CAUSIN, Teresa DELA TORRE, Tomas DEL VALLE, Clemencia DEL VALLE, Filomena DEL VALLE, Josefa DEL VALLE, Norma DEL VALLE, Justino PARAS, Demetrio ROA, Manuel ROA, Soledad ROA, Martin DELORASO, Teodoro ESTRADA, Filomeno GONZALES, Aurelio SASIL, Angelo YAP, Margarita AGUILAR, Asuncion DEL VALLE, Lourdes DEL VALLE, Socorro DEL VALLE, Rosa Aguilar GONZALES, and Cristina ROA, all unarmed, defenseless, non-combatant Filipino civilians, by bayoneting, beheading and strangling them (R 12-3).

Specification 2: abuse and mistreat seven Filipino girls and women; namely, Natividad del Valle PARAS, Margarita AGUILAR, Asuncion DEL VALLE, Lourdes DEL VALLE, Socorro DEL VALLE, Rosa Aguilar GONZALES, and Cristina ROA, and others, by forcing upon them sexual indignities and by raping or attempting to rape them (R 13).

Specification 3: wilfully, unlawfully and brutally beat, torture and mistreat without cause Martin DELORASO, Teodoro ESTRADA, Filemeno GONZALES, Aurelio SASIL, and Angelo YAP, unarmed and non-combatant Filipino civilians, and other persons (R 13-4).

PLEAS

Each of the accused pleaded "Not guilty" to the Charge and each of the specifications (R 16).

FINDINGS AND SENTENCE

AS TO MERATA:

The Commission upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring, found as to this accused:

Specification 1: Guilty, except for the word "beheading".

Specification 2: Guilty, except the words "seven", "girls and women", "Margarita Aguilar", "Asuncion Del Valle", "Lourdes Del Valle", "Socorro Del Valle", "Rosa Aguilar Gonsales", and "Cristina Roa and divers other person names unknown", "them", "or attempting to rape them". Substituting the word "one" for "seven", "girl" for "girls and women", "her" for "them"; of the excepted words, "Not Guilty", of the substituted words "Guilty".

Specification 3: Guilty

Of the Charge: GUILTY, except the words, "and attempt to rape seven" and the word "civilians", substituting therefor the word "one" and the word "civilian". Of the excepted words, "Not Guilty"; of the substituted words, "Guilty".

AS TO SUGIMOTO, MASUYAMA, KANANO, KANASE AND ABE:

The Commission upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring, found as to these accused:

Specification 1: GUILTY, except for the word "beheading".

Specification 2: NOT GUILTY

Specification 3: GUILTY

Of the Charge: GUILTY, except for the words "rape and attempt to rape seven Filipino female civilians".

Each of the accused was sentenced to death by hanging.

I. ARRAIGNMENT.

A. At the time of arraignment, the Commission, pursuant to duly published and authenticated orders (R 2-6, Pros. Ex. No. 1) was composed of Col. Francis A. Hause, President and Law Member, Col. William R. Hamby, Lt. Col. Starley B. Boykin, and Capt. Glenn W. Hendricks. Capt. William O Lutz, prior to the convening of the Commission but subsequent to the publication of orders appointing the Commission, had been placed on orders returning him to the United States.

B. The prosecution was conducted by Lieutenants Ralph R. Blendsworth and John R. Fleming (R 6), while the accused were, by their choice, represented by Lieutenants Ivan H. Gordon and Bailey B. Underwood (R 9-11).

C. The Commission, interpreters and reporters were duly sworn (R 7). The swearing of the prosecutors was not accomplished, but in view of the fact the Regulations governing these trials do not require they be sworn this does not constitute reversible error.

D. The rights of the accused, as set forth in paragraph 5b, letter, AG 000.5 (5 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 5 December 1945, subject: Regulations Governing the Trials of Accused War Criminals, were read to the accused by the President of the Commission (R 8), translation thereof

into Japanese being waived by defense counsel, the accused having had those rights previously explained to them (R 9).

E. The commission found a certified copy of the Charge and Specifications, together with a true and complete translation thereof, was served upon the accused 21 March 1946 (R 9).

F. Following the reading of the Charge and Specification, the prosecution moved for the dismissal, without prejudice, as to Seiichi Onishi, Norikumi Yamasaki, Yoshimori Uehara, Tatsuma Tagawa, Shimei Ono and Kazumi Nojima because they had not been identified as perpetrators of the atrocities alleged in this matter (R 15). The motion was granted.

G. The commission heard the plea of each of the accused to the Charge and Specifications. Each pleaded "Not Guilty" (R 16).

II. TRIAL.

A. Formal Matters.

1. Each witness was duly sworn before testifying.

B. Prosecution Evidence.

Natividad del Valle PARAS lived in Barili, Cebu, where, on 2 September 1944, she was arrested by the Japanese and taken to the school which they used for a garrison (R 21). Abe, one of the accused was present and abused her sister, Socorro (R 22). Her father and mother, six sisters, nieces and husband were taken to the school (R 22-3). She has seen none of them since 3 September 1944, none of them was a guerrilla and none had a trial (R 23). At the garrison she saw Mrs. Mercedes Rea and four of her children, Procopio Causin and Mrs. Maria Noel Causin (R 23). The last named two, her husband, her father and herself were taken out to a pit the night they were arrested and all but her were bayonated (R 23). She identified Kawano as having bayonated her father and Abe as having bayonated her husband, Justino Paras (R 24). She saw her mother taken out to the pit but did not

see her bayoneted (R 25). The night of 3 September 1944 she was taken to room 5 and raped by Murata, whom she identified. She later escaped through a trap door (R 25-6). While in this room she looked out the window and saw, some 15 to 20 feet away, her sisters Josefa, Clemencia and Filomena bayoneted by Abe, Hiraoaki and Masuyama (R27). She identified the latter in the courtroom (R 28). She saw Sugimoto at the garrison the night of 2 and 3 September (R 29) and identified him in court (R 30). On cross-examination she said Sugimoto had been there almost a month when these events occurred (R 31), although he was absent for a few days in August (R 33).

Helen Causin MORALES was arrested 2 September 1944 at Barili, Cebu, by Japanese (R 37). At the garrison she saw her father and mother, Procopio and Maria Causin, her sister, Mercedes Roa, and her children, Maria Christina, Soledad, Demetrio and Manuel (R 38). She has never seen any of these persons since that date (R 38,40). She heard women screaming (R 38) before she was questioned by Sugimoto (R 39,42) and released (R 39). None of the Causin family was a guerrilla (R 39). She saw the Del Valle family taken to pit near latrine (R 40). She recognized the bodies of her father, mother and Tomas Del Valle at the pit by school latrine (R 41). Japanese soldiers were drunk at garrison (R 42). Arrested persons may have been investigated, but not to her knowledge (R 43-4). Witness identified Masuyama as having arrested her father and Sugimoto as being known by her (R 44-5).

Hospicio AGUILAR lived in Barili, Cebu (R 45). His son-in-law, Filomeno Gonsales, was arrested 8 August 1944 and his daughters, Rosa and Margarita, were arrested 2 September 1944. He saw the girls' bodies at the Japanese garrison (R 46). Bayonet wounds showed on their bodies (R 47). According to information he had the girls were killed 12 September 1944. He identified Sugimoto and Masuyama, after

some confusion, and said he had seen all the accused in Barili (R 48).

Dr. Teodosio CAUSIN, physician of Barili, found the bodies of Rosa and Margarita Aguilar in front of the Central School Building. Later he dug up Soledad and Christina Ros and one he could not identify (R 50). The Aguilar girls' bodies bore bayonet wounds (R 51). Found two Del Valle girls, Manuel and Demetrio Ros (R 51), Procopio and Maria Noel Causin and Justina Perez (R 52). The latter's body was about 20 yards from the pit by the latrine and bore a bayonet wound (R 53). The witness identified Masuyama, Abe, Kawano and Sugimoto. The first two were in Barili from June and the latter from August to late September, 1944 (R 54-5).

Juan MERCADO, a resident of Barili, Cebu (R 56), worked in Japanese garrison as assistant cook (R 57). Saw Martin Dolorase mistreated by Masuyama, Kawabe, Kawano and Sugimoto (R 58). Saw Kawabe strike Dolorase with a bat and Masuyama beat him with a piece of wood. Kawano and Sugimoto also struck him, the beating going on from morning to late afternoon (R 59). Witness took the body down the next morning as ordered by Japanese (R 60). When witness came to work 3 September 1944 he was refused admittance by Abe (R 62) to get utensils because, he was told, there were girls in the room (R 60-1). He saw dead bodies of girls 13 September 1944 when Japs withdrew (R 62-3). Witness stated Sugimoto remained in Barili from date of arrival in August until the garrison left in September (R 65).

Herenenegilda OLANDRE, who lived in Barili during August and September, 1944 (R 66), worked in the Daido, a Japanese firm (R 67). In her work she visited the garrison and there, during latter part of August, saw Filemeno Gonzales, Teodoro Estrada, Angelo Yap and Aurelio Sasil being mistreated by being hung on the bars of the swing (R 67-8). While so hung these ones were hit by Japanese with pieces of wood, pistols or the hands (R 69). She identified Sugimoto and Masuyama as participants (R 70).

Captain Frank S. JOHNSON identified statement taken from Sugimoto 8 December 1945 and signed by him 10 December 1945 (R 71). Statement was introduced as Prosecution's Exhibit No. 2 (R 72).

In this statement Sugimoto said he was in Barili August to 3 September 1944 (R 73). Lt. Higashi sent orders to kill women and children under arrest at the school (R 74-5). He had Corporal Hirasaki carry out the orders (R 74-5). The corporal and those helping him are all dead (R 76-7).

C. Defense Evidence.

MASANORI SUGIMOTO, a Sergeant Major in the Japanese Army, who was in charge of a unit in Barili from 18 August to 13 September 1944, left Barili 20 August and did not return until 8 or 9 P.M. (R 85) 3 September 1944. Murata and Kuabe, two of the accused, were with him (R 83). Corporal Hirasaki was in charge of the garrison in his absence (R 84). He received no report from Corporal Hirasaki about any activity in Barili during his absence (R 86). Says his statement introduced by prosecution is true (R 86-7). On cross-examination witness knew none of the alleged mistreated persons (R 88). Witness did not see any girls at garrison when he returned from expedition and did not remember talking to Henry Redula, an interpreter, or Mrs. Morales on 2 September 1944 (R 90,92). About seven people were picked up 7 or 8 September but witness did not investigate them (R 91).

Sugimoto was recalled to the witness stand (R 122) and stated he did drink intoxicating liquor but there were no parties in September 1944 in the garrison and he had no girls in his room (R 122). He related some guerrillas were executed by Hirasaki and five others, all now dead or missing (R 123-5). These men, except Hirasaki, were under his command (R 125). He did not conduct investigations (R 125-6).

MASAYOSHI MURATA, a Corporal in the Japanese Army (R 93), said he was on punitive expedition as Sugimoto testified (R 94).

When unit left 13 September 1944 he saw six or seven Filipinos at the garrison (R 95) and asked Corporal Hirasaki about them because the corporal was in charge of intelligence. On cross-examination he did not remember the number of the room where he stayed but it did have a trap door (R 97). He saw no girls 5 September but did on 5 or 6 September 1944 (R 97). He does not drink and didn't see any parties going on (R 98).

KISAO KAWABE repeated testimony about punitive expedition (R 99-100). Never saw anyone hanging from playground bars (R 100) and had no baseball equipment (R 101). Saw no Filipino civilians in any of the rooms of building 3 September 1944 (R 101-2). On cross-examination did not recall Henry Redula talking to him the night of 2 September 1944 because he was not on guard that night (R 103). Witness said he had seen trap door in room where Murata, Hirasaki and Suginoto slept (R 104).

LT. KAWAHARA stated Suginoto went on punitive expedition which left mid-August and returned "About the end of August" (R 106). After resting about two days following first expedition, witness went on another but Sergeant Suginoto did not go (R 107).

MASASEI MASUYAMA was in Barili from early February, 1944 until mid-September 1944 where he was a street guard (R 108-9). He did not arrest any persons but saw five or six women in garrison around 10 September (R 109). He did not kill any of the women and doesn't drink (R 110). He never saw any dead bodies, or any persons being mistreated (R 111).

YUKIO KANAMO was a guard at guardhouse when Suginoto's expedition returned around 3 September (R 113). Some Filipinos were in guardhouse around 6 or 7 September but he doesn't know what became of them (R 114,115). Witness never killed any civilians in Barili (R 115). He does not remember any drinking parties after

August, 1944 (R 116).

NATANU ABE came to Barili in February, 1944 (R 117). The Sugimoto expedition returned 3 September 1944 at which time there were no Filipino civilians in the guardhouse (R 118). He was never ordered to kill any civilians by either Sugimoto or Hiraoaki (R 118). He did not remember: (1) any civilians being in the guardhouse 13 September 1944 when the unit left Barili; (2) refusing any Filipino cook admission to a storehouse; (3) any Filipino civilians hanging from swing bars (R 119). He did not go to any parties with people of Barili and does not drink intoxicating liquors (R 119). On cross-examination he remembered some women and children being in garrison in September 1944 but he never talked to them and didn't know why they were there (R 120). There was some individual drinking going on during September but he does not recall who did it except he did not see Sugimoto participating (R 120-1).

D. Prosecution Rebuttal Evidence.

HENRY RENDULA, held as an alleged collaborator, was with the Sugimoto Detachment in Barili during August and September, 1944 (R 127), as an interpreter (R 128). Sugimoto was in charge, with Corporals Hiraoaki and Murata under him (R 128). He recalled the punitive expedition under Sugimoto left about 7 August 1944 and returned the latter part of August (R 128-9). During the latter part of August, Sugimoto investigated Toni Roa, Teodoro Estrada, Filomeno Gonzales and Aurelio Sasil at the Philippine Constabulary Headquarters in Barili, the witness acting as interpreter (R 129-130). Murata and Kawabe were at this investigation (R 130-1). Angelo Yap was investigated, too, and those investigated were struck with the butt of a gun and a bayonet (R 131). The witness identified each of the accused and stated they were at garrison during latter part of August (R 132). All of the accused were in the garrison the night of 2 September 1944 (R 132). Witness was halted by Kawabe (R 132) who told him not to mind about activity in garrison where soldiers were running about

with fixed bayonets (R 133). He talked to Sugimoto who said he would call him if civilians were to be interrogated (R 133). The witness saw Japanese drinking and singing as they do when intoxicated (R 134). He stated investigations were conducted by Sugimoto (R 134). He saw girls in the garrison (R 134) and knew Sugimoto, Murata and Kawabe played Mah-jongg with the girls (R 135). When the garrison withdrew 13 September 1944 he inquired why the foxholes were covered and was told it was military policy (R 135-6). The witness was in the garrison one or two times daily the latter part of August (R 137). The girls referred to were not free to leave the garrison (R 139).

III. OPINION.

A. As to Jurisdiction.

1. Pursuant to the 1st Ind, AG 000.5 (26 Jan 46) LS, General Headquarters, United States Army Forces, Pacific, 26 January 1946, to basic Letter AG 000.5 (26 Jan 46) LS, General Headquarters, Supreme Commander for the Allied Powers, 26 January 1946, Subject: Trial of Seiichi ONISHI et al, and acting within the authority vested in him, the Commanding General, United States Army Forces, Western Pacific, did, by paragraph 17, Special Orders No. 80, Headquarters, United States Army Forces, Western Pacific, 5 April 1946, properly establish the commission trying this matter.

2. The Commission had jurisdiction over the territory wherein it sat, over the persons brought before it for trial and over the offenses with which they were charged. Letter, AG 000.5 (5 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, 5 December 1945, Subject: Regulations Governing the Trials of Accused War Criminals.

B. As to Procedure.

1. The members of the Commission sitting in this matter were qualified so to do and they, the interpreters and reporters

were duly sworn. The Prosecution was not sworn but in view of the fact the Regulations do not require the Prosecution be sworn and in the absence of an objection on the part of the Defense this oversight is not held to be reversible error.

2. The rights of the accused were read to them in open court by the President of the Commission. Translation thereof was waived upon the statement of counsel for the accused that their rights had previously been fully explained to them. A certified copy of the Charge and Specifications, with a true and complete translation thereof in the Japanese language were furnished each of the accused and all testimony at the trial was translated into Japanese.

3. The trial procedure established by the Rules and Regulations governing these trials was complied with in all respects.

4. The findings and sentences were returned with the requisite two-thirds vote in the affirmative by the members of the Commission constituting a quorum.

C. As to Evidence.

In this matter six men stood trial for the murder of twenty-three Filipino civilians, the rape of seven Filipinas and the maltreatment of five Filipinos.

The Commission found each of them guilty of the killing of the twenty-three and the maltreatment of the five. One of the accused was found guilty of the rape of a woman who appeared as a witness.

As is customary in these cases, the accused sought to establish their absence from the scene of the crimes and the accomplishment of the crimes by some brothers-in-arms who are now dead or missing. These are time-tested alibis and always arouse a suspicion of fabrication in these cases.

Each of the accused, save Abe, was shown by eye-witnesses testimony to have maltreated at different times and places various Filipino civilians. One such Filipino was Martin Dalereso. The accused had caused him to be tied up to the school bars, arms swung to the rear, in such manner his feet barely touched the ground. He was so tied a whole day. During the day the accused beat and struck him with a bat, pieces of wood and small arms until he died. A witness for the prosecution removed his body from the bars. Other testimony received at the trial showed similar treatment meted out to other Filipinos none of whom have been seen since they were taken to the garrison.

Direct testimony shows Abe guilty of bayonetting at least two persons, causing their deaths. Kawano and Maeyama likewise were seen bayoneting persons. Each of the accused was placed at the scene of the crime alleged in specification 1 by eye-witnesses who knew them well enough to identify them positively. Fifteen of the persons alleged killed were women and children. Two others were elderly men. There was no evidence anyone of the deceased was a guerrilla or assisted guerrillas. Nor was any proof given showing such circumstances to exist as to merit a belief they were assisting guerrillas or that attacks upon the garrison were so imminent as to necessitate the taking of these lives. Quite the contrary may be deduced from the evidence presented. Clearly, there is sufficient cause for believing these persons' lives were taken in violation of the laws of war.

The garrison at Barili was under command of Sergeant Major Sugimoto, and, though he denies it, prosecution witness Redula stated he conducted the investigations for the garrison. In this capacity he knew how many persons were brought in for questioning and what happened to them. Sugimoto, in the statement taken from him, said only seven or eight persons, women and children, were

arrested while he was in Barili. These ones, he said, were killed on orders from company headquarters. The remaining persons, men, women and children whose names are part of this record and whose bodies were found on the school grounds, were killed then upon his order and became his responsibility. As the garrison commander he had the power of life or death over the persons brought there. It is evident the course he pursued. He must be made to pay for his crime.

While the Commission is not justified in finding each of the accused guilty of killing the twenty-three persons named in Specification 1, yet the evidence amply demonstrates each of the accused actively participated in the death of one or more of the deceased and each of the accused was present at the scene of the crimes. The sentences announced by the Commission are proper.

IV. CLEMENCY.

No application for clemency has been presented by counsel for the accused and none is recommended.

V. RECOMMENDATION.

It is recommended the sentences herein be approved and the record of trial be forwarded to the Commander-in-Chief, United States Army Forces, Pacific, for action under paragraph 2, 1st Ind, General Headquarters, United States Army Forces, Pacific, 26 January 1946, to Letter, General Headquarters, Supreme Commander for the Allied Powers, file AG 000.5 (26 Jan 46) LS, Subject: Trial of Seiichi Onishi et al, 26 January 1946.

The form of action designed to effect the foregoing recommendation is attached.

HOWARD C. GRAHAM
1st Lt., TC
Asst. Staff Judge Advocate

I CONCUR:

ASHTON M. HAYNES
Colonel, JAGD
Staff Judge Advocate

CERTIFICATION

THIS CERTIFIES that this Volume is a part of the Proceedings of the Military Commission appointed by Paragraph 17, Extract copy SO No. 80, Headquarters, United States Army Forces, Western Pacific, dated 5 April, 1946, in the trial of the case of the United States of America against MASANORI SUGIMOTO, MASAYOSHI MURATA, MASASHI MASUYAMA, YUKIO KAWANO, HISAO KAWABE, and WATARU ABE.

Dated 13 April 1946.

Francis A. Hause

FRANCIS A. HAUSE
Colonel, CAC
President & Law Member of
Commission

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces,
Western Pacific

UNITED STATES OF AMERICA -vs- SEIICHI ONISHI NORIKUMI YAMASAKI MASANORI SUGIMOTO YOSHINORI UEHARA TATSUMA TAGAMI TAKAMI ONO KAZUMI NOJIMA MASAYOSHI MURATA MASASHI MASUYAMA YUKIO KAWANO HISAO KAWABE WATARU ABE	ARRAIGNMENT AND PUBLIC TRIAL

Court No. 1
High Commissioner's Residence
Manila, P. I.
8 April 1946

Met, pursuant to Notice, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL FRANCIS A. HAUSE, CAC, President and Law Member
COLONEL WILLIAM R. HAMBY, CAV
LIEUTENANT COLONEL STARLEY N. BOYKIN, JR., INF
CAPTAIN WILLIAM O. LUTZ, INF
CAPTAIN GLENN W. HENDRICKS, FA

APPEARANCES:

FOR THE PROSECUTION:

1st LIEUTENANT RALPH R. BLOODWORTH, INF, Chief Prosecutor
2nd LIEUTENANT JOHN R. FLEMING, ORD, Assistant Prosecutor

FOR THE DEFENSE:

1st LIEUTENANT IVAN H. GORDON, TC, Defense Counsel

OFFICIAL INTERPRETERS FOR THE COMMISSION:

FELOMINA ZOSA
JOSE MA BATUCAN
EUSTAQUIO BAYOT
T/SGT SHIGEO MORISATO
T/SGT ROY KATO
T/4 ISAMI OSATO

OFFICIAL REPORTERS FOR THE COMMISSION:

PHILOTAS A. TSOKAS
S. CORNELIA PEVETO

REPORTED BY:

PHILOTAS A. TSOKAS
S. CORNELIA PEVETO

I N D E X

WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS	EXAM. BY COMM.
Natividad Del Valle Paras	21	30			
Helen Causin Morales	37	42			44
Hospicio Aguilar	45		48		47
Dr. Teodosio Causin	49	53			54
Juan Mercado	56				
Hermenegilda Olandre	66				
Frank S. Johnson	71				

DOCUMENTARY EVIDENCE

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EXHIBITS

	ADMITTED INTO EVIDENCE
Prosecution's Exhibit No. 1	1
Prosecution's Exhibit No. 2	72

P R O C E E D I N G S

The Commission convened, pursuant to notice, at 0830 hours in Court No. 1, High Commissioner's Residence, Manila, P. I.

COLONEL HAUSE: The Commission will be in session.

LIEUTENANT FLEMING: Inasmuch as the proceedings to follow involve Japanese, it is requested that the proceedings be translated from English to Japanese.

COLONEL HAUSE: The proceedings will be so translated.

LIEUTENANT FLEMING: There has been referred to this Commission for trial the case of the United States of America against Seiichi Onishi, Norikumi Yamasaki, Masanori Sugimoto, Yoshinori Uehara, Tatsuma Tagami, Takami Ono, Kazumi Nojima, Masayoshi Murata, Masashi Masuyama, Yukio Kawano, Hisao Kawabe, and Wataru Abe. The Accused are now present, together with the Defense Counsel, appointed by the convening authority. The Prosecution is ready to proceed.

COLONEL HAUSE: You may proceed.

LIEUTENANT FLEMING: I hold in my hand Letter Order AG 000.5 (5 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 5 December 1945, the subject being "Regulations Governing the Trials of Accused War Criminals." I ask that this Letter Order be entered into evidence and marked "Prosecution's Exhibit No. 1."

COLONEL HAUSE: It is so ordered.

(Prosecution Exhibit No. 1 for identification was marked and received in evidence.)

LIEUTENANT FLEMING: The Prosecution submits for incorporation into the record of these proceedings the following documents:

Letter Order, AG 000.5 (26 Jan 46) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 26 January 1946, with the subject being "Trial of Seiichi Onishi and others."

Letter Order, AG 000.5 (26 Jan 46) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 26 January 1946, with the subject being "Trial of Seiichi Onishi and others," with first indorsement from General Headquarters, United States Army Forces, Pacific, dated 26 January 1946.

Paragraph 17 (No.) of Special Order 80 (No.), Headquarters, United States Army Forces, Western Pacific, dated 5 April 1946, entitled "Extract."

COLONEL HAUSE: There being no objection, the orders are received into the record.

"GENERAL HEADQUARTERS

"SUPREME COMMANDER FOR THE ALLIED POWERS

"APO 500

"AG 000.5 (26 Jan 46) LS 26 January 1946

"SUBJECT: Trial of Seiichi ONISHI et al.

"TO : Commander-in-Chief
United States Army Forces, Pacific, APO 500

"1. It is desired that a Military Commission be appointed for the trial of Seiichi Onishi and other named Japanese members of the Japanese Imperial Forces, for the

alleged offenses indicated on the attached charge.

"2. The trial is to be held in the city of Manila, Philippine Islands. The trial shall be conducted in conformity with Regulations Governing the Trials of Accused War Criminals, dated 5 December 1945, General Headquarters, Supreme Commander for the Allied Powers.

"3. The record of trial including judgment or sentence and the action of the appointing authority will be forwarded to this headquarters. Unless otherwise directed, the execution of any death sentence will be withheld pending the action of the Supreme Commander for the Allied Powers.

"FOR THE SUPREME COMMANDER:

"/s/ H. W. ALLEN
/t/ H. W. ALLEN
Colonel, A.G.D.
Asst.Adjutant General

"1 Incl:
Chg vs Seiichi Onishi et al"

- - -

"GENERAL HEADQUARTERS

"SUPREME COMMANDER FOR THE ALLIED POWERS

"APO 500

"AG 000.5 (26 Jan 46) LS 26 January 1946

"SUBJECT: Trial of Seiichi ONISHI et al.

"TO : Commander-in-Chief
United States Army Forces, Pacific, APO 500

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"FOR THE SUPREME COMMANDER:

"/s/ H. W. ALLEN
/t/ H. W. ALLEN
Colonel, A.G.D.
Asst.Adjutant General

"1 Incl:
Chg vs Seiichi Onishi et al"

"BASIC: Ltr, GHQ, SCAP, file 000.5 (26 Jan 46) LS, dtd 26 Jan 46, sub: "Trial of Seiichi Onishi et al.

"AG 000.5 (26 Jan 46) LS 1st Ind.

"General Headquarters, United States Army Forces, Pacific, APO 500, 26 Jan 46.

"TO: Commanding General, United States Army Forces, Western Pacific, APO 707.

"1. Pursuant to basic communication you are hereby directed to appoint a Military Commission for the trial of the following named members of the Japanese Imperial Forces:

Seiichi Onishi
Norikuni Yamasaki
Masanori Sugimoto
Yoshinori Uehara
Tatsuma Tagami
Takami Ono
Kazuni Nojima
Masayoshi Murata
Masashi Masuyama
Yukio Kawano
Hisao Kawabe
Wataru Abe

"2. All records of trial including judgment or sentence, and the action of the appointing authority will be forwarded to this headquarters. Unless otherwise directed, the execution of any death sentence will be withheld pending the action of the Supreme Commander for the Allied Powers.

"3. The following named officers, assigned to the War Crimes Investigating Detachment, this headquarters, are made available to your command for service as prosecution personnel on the Military Commission to be convened by you for this purpose:

Captain James J. Jenkins, Inf., Chief Prosecutor
Captain Harry D. Turner, FA, Asst. Prosecutor

"By command of General MacARTHUR:

"/s/ H. W. ALLEN
H. W. ALLEN
Colonel, A.G.D.
Asst.Adjutant General

"1 Incl:
Chg as indicated"

- - -

"RESTRICTED

"HEADQUARTERS

"UNITED STATES ARMY FORCES WESTERN PACIFIC

"Special Orders)
No. ..... 80)

APO 707
5 April 1946

"EXTRACT

"17. The following officers are appointed members of a Military Commission to meet in the City of Manila, Philippine Islands, at the call of the President thereof, for the trial of Seiichi ONISHI and other accused war criminals. (Authority: 1st Ind. GHQ, AFPAC, APO 500, 26 Jan 46, to letter GHQ, SCAP, file AG 000.5 (26 Jan 46) LS, dated 26 Jan 46, subj: 'Trial of Seiichi ONISHI, et al'):

Col. Francis A. Hause CAC Pres. & Law Member
Col. William R. Hamby CAV
Lt. Col. Starley N. Boykin INF
Capt. William O. Lutz INF
Capt. Glenn W. Hendricks FA

"1st Lt. Ralph R. Bloodworth, INF, is designated Chief Prosecutor and 2d Lt. John R. Fleming, ORD, is designated Asst. Prosecutor. 1st Lt. Ivan H. Gordon, TC, is designated Defense Counsel.

"The Commission will follow the provisions of Letter, GHQ, SCAP, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals," and is authorized to employ or appoint such interpreters, stenographic reporters and other assistants as it shall deem advisable.

"The record of trial, including any judgment or sentence, will be transmitted directly to this headquarters for action by the appointing authority.

"BY COMMAND OF LIEUTENANT GENERAL STYER:

"OFFICIAL:

/s/ BENITO MORALES
/t/ BENITO MORALES
Colonel, AGD
Asst Adj Gen.

"J G CHRISTIANSEN
Major General, USA
Deputy Commander, and
Chief of Staff

"DISTRIBUTION:
War Crimes (75)

"RESTRICTED"

LIEUTENANT FLEMING: Let the record show at this time that the President of this Commission has previously delegated to the Prosecution the power and duty of summoning witnesses and administering oaths during the course of these proceedings in accordance with Paragraph 5-c (3) of the "Rules and Regulations Governing the Trial of Accused War Criminals."

The Prosecution is ready to proceed with the arraignment of Seiichi ONISHI, Norikumi Yamasaki, Masanori Sugimoto, Yoshinori Uehara, Tatsuma Tagami, Takami Ono, Kazumi Nojima, Masayoshi Murata, Masashi Masuyama, Yukio Kawano, Hisao Kawabe, and Wataru Abe.

COLONEL HAUSE: The reporters will be sworn.

(Whereupon, Philotas A. Tsokas and S. Cornelia Peveto were sworn in as reporters.)

COLONEL HAUSE: The interpreters will be sworn.

(Whereupon, Felomina Zosa, Jose Ma Batucan, Eustaquio Bayot, T/Sgt. Shigeo Morisato, T/Sgt. Roy Kato, and T/4 Isami Osato were sworn in as interpreters.)

COLONEL HAUSE: The Commission will be sworn.

I would like to state for the record that Captain Lutz has been ordered to return to the United States and will not sit on this trial.

(Whereupon, Colonel Francis A. Hause, CAC, President and Law Member, Colonel William R. Hamby, CAV, Lt. Colonel Starley N. Boykin, INF, and Captain Glenn W. Hendricks, FA, were sworn in as members of the Commission.)

LIEUTENANT FLEMING: A certified copy of the Charge and Specifications against Seiichi Onishi, Norikumi Yamasaki, Masanori Sugimoto, Yoshinori Uehara, Tatsuma Tagami, Takami Ono, Kazuni Nojima, Masayoshi Murata, Masashi Masuyama, Yukio Kawano, Hizao Kawabe and Wataru Abe together with a true and complete translation thereof was served upon the Accused by 1st Lt. Ralph R. Bloodworth, 21 March 46 at POW Branch Camp #5, Luzon, P. I., and at the High Commissioner's Residence, Manila, P. I.

COLONEL HAUSE: The rights of the Accused as set forth in Paragraph 5-b, sub section 3, of letter dated 5 December 1945, General Headquarters, Supreme Commander for the Allied Powers, entitled "Regulations Governing the Trial of Accused War Criminals, heretofore introduced into the record, will be read and explained.

LIEUTENANT GORDON: There is no need, your Honor, to read this. They have been informed of their rights by me -- unless the Commission desires it.

LIEUTENANT BLOODWORTH: If it please the Commission, I think it would be best for the Presiding Officer to read them into the record and then he can waive the translation to the Accused.

COLONEL HAUSE: I will read the rights of the Accused. The Accused shall be entitled:

(1) To have in advance of trial a copy of the Charge and Specifications, clearly worded, so as to apprise the Accused of each offense charged.

(2) To be represented prior to and during trial by counsel appointed by the convening authority, or counsel of his own choice, or to conduct his own defense.

(3) To testify in his own behalf and have his counsel present relevant evidence at the trial in support of his defense, and cross-examine each adverse witness who personally appears before the Commission.

(4) To have the substance of the Charge and Specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them.

I will ask the Defense at this time if these rights have been explained to the Accused, and if he desires to have these rights translated to the Accused.

LIEUTENANT GORDON: The rights have been explained to the Accused, sir, and they do not desire them to be translated at this time.

COLONEL HAUSE: We will proceed. The provisions of sub-section a have been complied with, it appearing that a certified copy of the Charge and Specifications, together with a true and complete translation thereof, were served upon the Accused, 21 March 1946.

COLONEL HAUSE: Whom does the Accused desire to introduce as Defense Counsel?

LIEUTENANT GORDON: Myself, 1st Lieutenant Ivan H. Gordon, TC, and 2nd Lieutenant Gailey B. Underwood, TC.

COLONEL HAUSE: Each Accused should be asked if he is satisfied to be represented by the two officers concerned, Lieutenant Gordon and Lieutenant Underwood.

Will the Interpreter ask each Accused that question?

(Whereupon Interpreter Morisato translated the foregoing statement to the Accused.)

COLONEL HAUSE: The Accused will stand. Ask each one the question. Call of their names and their requests.

(Whereupon Accused stood.)

SEIICHI ONISHI: (Through Interpreter Morisato) Lieutenant Gordon.

NORIKUMI YAMASAKI: (Through Interpreter Morisato) Lieutenant Gordon.

MASANORI SUGIMOTO: (Through Interpreter Morisato) Lieutenant Gordon and Lieutenant Underwood.

YOSHINORI UEHARA: (Through Interpreter Morisato) Lieutenant Gordon and Lieutenant Underwood.

TATSUMA TAGIMI: (Through Interpreter Morisato) Lieutenant Gordon and Lieutenant Underwood.

TAKAMI ONO: (Through Interpreter Morisato) Lieutenant Gordon and Lieutenant Underwood.

KAZUMI NOJIMA: (Through Interpreter Morisato) Lieutenant Gordon and Lieutenant Underwood.

MASAYOSHI MURATA: (Through Interpreter Morisato) Lieutenant Gordon and Lieutenant Underwood.

MASASHI MASUYAMA: (Through Interpreter Morisato) I wish to be represented by Lieutenant Gordon and Lieutenant Underwood.

YUKIO KAWANO: (Through Interpreter Morisato) Lieutenant Gordon and Lieutenant Underwood.

HISAO KAWABE: (Through Interpreter Morisato) Lieutenant Gordon and Lieutenant Underwood.

WATARU ABE: (Through Interpreter Morisato) Lieutenant Gordon and Lieutenant Underwood.

COLONEL HAUSE: Ask those who answered, "Lieutenant Gordon" only, if they also desire Lieutenant Underwood.

(Whereupon the above statement was translated to the Accused by Interpreter Morisato.)

SEIICHI ONISHI: (Through Interpreter Morisato) I wish to have both, sir.

NORIKUMI YAMASAKI: (Through Interpreter Morisato) I wish to have both, sir.

COLONEL HAUSE: Does the Accused wish to have the Charge and Specifications and documentary evidence translated?

LIEUTENANT GORDON: No, sir, we waive it.

COLONEL HAUSE: The Charge and Specifications will be read to the Accused.

LIEUTENANT FLEMING: (Reading)

"GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

"Before the MILITARY COMMISSION convened by the COMMANDING GENERAL United States Army Forces, Western Pacific	)	"UNITED STATES OF AMERICA
	)	vs
	)	Seiichi ONISHI
	)	Norikumi YAMASAKI
	)	Masanori SUGIMOTO
	)	Yoshinori UEHARA
	)	Tatsuma TAGAMI
	)	Takami ONO
	)	Kazumi NOJIMA
	)	Masayoshi MURATA
	)	Masashi MASUYAMA
	)	Yukio KAWANO
	)	Hisao KAWABE
	)	Wataru ABE

"CHARGE

"The following members of the Imperial Japanese Army Forces with their then designated and known titles:

"Lieutenant Colonel	Seiichi ONISHI
Captain	Norikumi YAMASAKI
Sergeant Major	Masanori SUGIMOTO
Superior Private	Yoshinori UEHARA
Superior Private	Tatsuma TAGAMI
Leading Private	Takami ONO
Superior Private	Kazumi NOJIMA
Corporal	Masayoshi MURATA
Leading Private	Masashi MASUYAMA
Superior Private	Yukio KAWANO
Superior Private	Hisao KAWABE
Superior Private	Wataru ABE

did, at the time and place hereinafter set forth, and during a time of war between the United States of America, its allies and Japan, willfully and unlawfully kill twenty-three Filipino civilians; rape and attempt to rape seven Filipino female civilians; beat and torture five Filipino civilians, in violation of the laws of war.

"SPECIFICATIONS

"1. In that Seiichi ONISHI, Norikumi YAMASAKI, Masanori SUGIMOTO, Yoshinori UEHARA, Tatsuma TAGAMI, Takami ONO, Kazumi NOJIMA, Masayoshi MURATA, Masashi MASUYAMA, Yukio KAWANO, Hisao KAWABE, Wataru ABE, and other persons whose names are unknown, connected and acting with Japan, did, at or near Barili, Cebu, Philippine Islands, on or about 2 September 1944, during a time of war between the United States of America, its allies and Japan, willfully and unlawfully murder Procopio CAUSIN, Maria Noel CAUSIN, Teresa DE LA TORRE, Tomas DEL VALLE, Clemencia DEL VALLE, Filomena DEL VALLE, Josefa DEL VALLE, Norma DEL VALLE, Justino PARAS, Demetrio ROA, Manuel ROA,

Soledad ROA, Martin DELORASO, Teodore ESTRADA, Filomeno GONZALES, Aurelio SASIL, Angelo YAP, Margarita AGUILAR, Asuncion DEL VALLE, Lourdes DEL VALLE, Socorro DEL VALLE, Rosa Aguilar GONZALES, and Cristina ROA, all unarmed, defenseless, noncombatant Filipino civilians, by bayonetting, beheading and strangling them, in violation of the laws of war.

"2. In that Seiichi ONISHI, Norikumi YAMASAKI, Masanori SUGIMOTO, Yoshinori UEHARA, Tatsuma TAGAMI, Takami ONO, Kazumi NOJIMA, Masayoshi MURATA, Masashi MASUYAMA, Yukio KAWANO, Hisao KAWABE, Wataru ABE, and other persons whose names are unknown, connected and acting with Japan, did, at or near Barili, Cebu, Philippine Islands, on or about 2 September 1944, during a time of war between the United States of America, its allies and Japan, abuse and mistreat seven Filipino girls and women; namely, Natividad del Valle PARAS, Margarita AGUILAR, Asuncion DEL VALLE, Lourdes DEL VALLE, Socorro DEL VALLE, Rosa Aguilar GONZALES, and Cristina ROA, and divers other persons, names unknown, by forcing upon them sexual indignities and by raping or attempting to rape them in violation of the laws of war.

"3. In that Seiichi ONISHI, Norikumi YAMASAKI, Masanori SUGIMOTO, Yoshinori UEHARA, Tatsuma TAGAMI, Takami ONO, Kazumi NOJIMA, Masayoshi MURATA, Masashi MASUYAMA, Yukio KAWANO, Hisao KAWABE, Wataru ABE, and other persons whose names are unknown, connected and acting with Japan, did, at or near Barili, Cebu, Philippine Islands, on or about 2 September 1944, during a time of war between the United States of America, its

allies and Japan, willfully, unlawfully and brutally beat, torture and mistreat without cause Martin DELORASO, Teodoro ESTRADA, Filomeno GONZALES, Aurelio SASIL, and Angelo YAP, unarmed and non-combatant Filipino civilians, and other persons whose names are unknown, in violation of the laws of war.

"Dated: 26 January 1946

/s/ ALVA C. CARPENTER
/t/ ALVA C. CARPENTER
Colonel, JAGD
United States Army

AFFIDAVIT

"Before me personally appeared the above-named accuser this 26 day of January 1946, and made oath he is a person subject to military law and that he personally signed the foregoing charge, and further that he has investigated the matters set forth in the charge, and that it is true in fact, to the best of his knowledge and belief.

"Edmund M. Sweeney /s/
1st Lt., JAGD AUS

"GENERAL HEADQUARTERS, UNITED STATES ARMY FORCES, WESTERN PACIFIC
APO 707 "5 April 1946

"Referred for trial to 1st Lt. Ralph R. Bloodworth, INF, Chief Prosecutor of the Military Commission appointed by paragraph 17, Special Orders No. 80 this Headquarters, 5 April 1946.

"By Command of Lieutenant General STYER:

/s/ J. J. GERHARDT
/t/ J. J. GERHARDT
Col, AGD
Adjutant General

"I hereby certify that I have served a copy hereof, together with a true and complete translation thereof into Japanese, on the above-named accused this 21st day of March 1946.

/s/ RALPH R. BLOODWORTH
1st Lt. Inf.

COLONEL HAUSE: There being no objection, the Charge and Specifications are received into the record.

LIEUTENANT GORDON: No objection.

LIEUTENANT FLEMING: The Prosecution now moves to dismiss without prejudice as to the following named Accused:

Seiichi Onishi , for the reason that the witnesses in this case have failed to identify him as connected with the atrocities alleged in the Charge and Specifications.

Norikumi Yamasaki, has not been identified as the Yamasaki connected with the atrocities alleged in this case.

Yoshinori Uehara, Tatsuma Tagama, Takami Ono and Kazumi Nojima, because the Prosecution witnesses have not identified them as perpetraters alleged in this case.

COLONEL HAUSE: The Charges and Specifications as against Seiichi Onishi, Norikumi Yamasaki, Yoshinori Uehara, Tatsuma Tagimi, Takami Ono and Kazumi Nojima will be dismissed without prejudice. Those dismissed will be excused from the courtroom, and the military police will take charge of them.

(Whereupon the Accused named left the room.)

COLONEL HAUSE: Are the Accused now ready to enter their pleas ?

LIEUTENANT GORDON: They are, sir.

COLONEL HAUSE:

Masanori Sugimoto, Masayoshi Murata, Masashi Masuyama, Yukio Kawano, Hisao Kawabe, and Wataru Abe, at this time the Commission will hear your pleas to the Charge and Specifications which have been read to you. You may plead either Guilty or Not Guilty.

(Whereupon Interpreter Morisato translated the above to the Accused.

MASANORI SUGIMOTO: (Through Interpreter Morisato) I plead Not Guilty.

HISAO KAWABE (Through Interpreter Morisato) I plead Not Guilty.

MASAYOSHI MURATA: (Through Interpreter Morisato) I plead Not Guilty.

WATARU ABE: (Through Interpreter Morisato) I plead Not Guilty.

YUKIO KAWANO: (Through Interpreter Morisato) I plead Not Guilty.

MASASHI MASUYAMA: (Through Interpreter Morisato) I plead Not Guilty.

COLONEL HAUSE: Does the Prosecution have any recommendations to make as to the time for trial?

LIEUTENANT FLEMING: The Prosecution is ready to proceed.

COLONEL HAUSE: Does the Defense have any request to make as to the time for trial, or as to any other pertinent matters?

LIEUTENANT GORDON: The Defense is ready to proceed.

COLONEL HAUSE: Are there any additional matters to be brought before the Commission at this time?

LIEUTENANT BLOODWORTH: We have none, sir.

COLONEL HAUSE: There appearing to be none, the Commission will now recess for ten minutes before proceeding with the trial.

(Short recess.)

COLONEL HAUSE: The Commission is ready to proceed.

LIEUTENANT BLOODWORTH: Sir, all the members of the Commission are present with the exception of Captain Lutz, the Prosecution is present, the Accused are present together with their Defense Counsel, and the Prosecution is ready to proceed.

COLONEL HAUSE: You may proceed.

LIEUTENANT BLOODWORTH: The Prosecution expects the evidence in this case to show that on or along about the first part of August 1944 Sergeant Major Sugimoto brought a small unit of about 22 Japanese to the town of Barili on Cebu Island. They established a garrison there and Sergeant Major Sugimoto, being in charge, was known to the local population as Captain Sugimoto because he was in charge of this small unit garrison. They stationed themselves at the Barili school grounds and took up their quarters in the Elementary School building, using the Home Economics Building as an office. Outside on the school grounds there were steel bars supporting swings formerly used by the children as a playground. During the latter part of August 1944 one Martin Deloraso was seen by the Prosecution witnesses hanging with his hands tied behind his back to these steel bars. He was left there all afternoon and all of that night. The next morning his body was removed by one of the Prosecution witnesses. The Prosecution expects the evidence to show the names of the Accused and the identity of the Accused that tortured Martin Deloraso and caused his death. Also in the latter part of August Filomeno Gonzales, Teodoro Estrada, Angelo Yap, and Aurelio Sasil were seen tortured at these same swings. These men were later killed.

The Prosecution expects the evidence to show that about the 2nd of September 1944 the entire Del Valle family, the Causin family, and Roa family of Barili were taken to the garrison that was commanded by Sugimoto, a total of somewhere around 23 civilians, most of them women and children. That night the Japanese were drinking pretty heavily; the old men and the old women were killed at the pit in the back of the latrine on the school grounds. The young women were taken to the rooms during the night. We expect the evidence to show, by drunken Japanese in their quarters in the Elementary School buildings. On the night of September 3rd we expect the evidence to show that by one of the Prosecution witnesses that she was taken to a room in the Elementary School building by one of these Accused and raped. That the Accused was drunk and went to sleep after performing the act and she sitting on the side of the bed and while she was praying she heard a scream outside of the Elementary School building where there was a line of foxholes used by the Japanese for training purposes and also as a possible defense against military activities or enemy activities, and she witnessed there the bayoneting of her three sisters by two of the Accused who had also taken the same sisters to their rooms. This witness made her escape and is the only eye witness alive that we have outside of some of the Filipino help used in the garrison. She came back later and saw some of the bodies which she identified. We also have other witnesses that identified the bodies.

The Japanese stayed at Barili until September 13th. On September 12th before they left we expect the evidence to show that they killed the rest of these young girls and

children, that they held in the storeroom as captives in the Elementary School buildings.

The Prosecution calls as its first witness Mrs. Natividad del Valle Paras.

The testimony of this witness will be of an embarrassing and delicate nature. For that reason the Prosecution asks that the audience be excluded from the courtroom during her testimony.

COLONEL HAUSE: Does that apply to just this one witness?

LIEUTENANT BLOODWORTH: That applies to just this one witness.

COLONEL HAUSE: The audience will be excluded from the courtroom during the hearing of the testimony of this first witness. The Commission will take a five-minute recess during which time the Military Police will clear the courtroom.

(Short recess.)

COLONEL HAUSE: The Commission is ready to proceed. (The proceedings at this point are being conducted in closed session.)

LIEUTENANT BLOODWORTH: Sir, all the members of the Commission are present with the exception of Captain Lutz, the Prosecution is present, the Accused is present together with their Counsel, and the Prosecution is ready to proceed.

COLONEL HAUSE: You may proceed.

LIEUTENANT BLOODWORTH: The Prosecution calls as its first witness Mrs. Natividad del Valle Paras.

NATIVIDAD DEL VALLE PARAS

called as a witness on behalf of the Prosecution, being first duly sworn, was examined and testified as follows through Interpreter Zosa:

DIRECT EXAMINATION

BY LIEUTENANT BLOODWORTH:

Q State your name.

A Natividad del Valle Paras.

Q What is your age?

A Twenty-one.

Q What is your nationality?

A Filipino.

Q What is your occupation?

A Housekeeper.

Q Where do you live?

A T. Padilla Street, Cebu City.

Q Did you ever live in Barili, Cebu?

A Yes.

Q Were you living in Barili during the month of August and September, 1944?

A Yes, sir.

Q During September were you picked up or apprehended by the Japanese?

A Yes.

Q What day was that?

A Saturday, September 2, 1944.

Q Tell what happened.

A Six Japanese soldiers went to our house and arrested us.

Q Do you know the names of any of these Japanese?

A Yes.

Q What were their names?

A Abe, Okabe, and Terashima.

Q How many are present in this courtroom among those Japanese who picked you up?

A There is only one.

Q Who is that?

A Abe.

Q Continue your story.

A When they went to the house they first searched our house and we were ordered to go downstairs. When we went downstairs we waited at the corner of the room and I saw my sister, Socorro del Valle, taken by two Japanese soldiers under some coconut trees.

Q Do you know the names of these soldiers?

A I know only one.

Q Who was that?

A Abe.

Q Where were you taken then?

A We waited at the corner.

Q Did you see anything out in the coconut grove?

A Yes, I saw Socorro abused by two Japanese soldiers.

Q What time did you arrive at the garrison at that night?

A Eight o'clock.

Q Give the ages, names, and relationships of the members of your family that were taken to the garrison that night.

A My father, Tomas del Valle, 50 years old; my mother, Teresa del Valle, 48 years old; my eldest sister, Lourdes del Valle, 25 years old; my elder sister, Asuncion del Valle, 23 years old; my younger sister, Socorro del Valle, 18 years old; my younger sister, Filomena del Valle, 16 years old;

my younger sister, Josefa del Valle, 13 years old; our youngest sister, Clemencia del Valle, 11 years old; my niece, Norma, 4 months old; my husband, Justino Paras, 24 years old.

Q Since the night of September 3, 1944, have you ever seen any of the members of the family that you mentioned alive?

A No.

Q Were you or the members of the family that you have mentioned guerrillas or engaged in guerrilla activities?

A No.

Q Were you ever given a trial?

A No.

Q After you arrived at the garrison did you see anybody else brought in by the Japanese?

A Yes.

Q Will you tell who that was?

A Mercedes Roa with four of her children, Mr. Procopio Causin, Mrs. Maria Noel Causin.

Q During the night of September 2, 1944, were you taken out to a pit on the school grounds?

A Yes.

Q Who was taken out to that pit?

A Mr. Procopio Causin, Mrs. Maria Causin, my father Tomas del Valle, my husband Justino Paras, and myself.

Q Tell what happened out there.

A When we reached the pit they were all bayoneted.

Q How many Japanese were out there?

A Each of the captives was held by one Japanese soldier.

Q Who bayoneted your father, Tomas del Valle?

A Kawano.

Q Do you know Kawano?

A Yes.

Q Will you point him out if he is in the courtroom. Walk over there and point him out.

(Whereupon the witness walked over and pointed to the Accused Kawano.)

LIEUTENANT BLOODWORTH: Let the record show that the witness pointed out the Accused Kawano.

Q Who bayoneted your husband, Justino Paras?

A Abe.

Q Will you point out Abe if he is in the courtroom.

(Whereupon the witness pointed to the Accused Abe.)

LIEUTENANT BLOODWORTH: Let the record show that the witness pointed to the Accused Abe.

Q Did you recognize any of the other Japanese out there at the pit?

A Only Abe and Kawano.

Q Anybody else?

A No more.

Q Were you bayoneted?

A No.

Q What happened to you?

A I was taken back to the Home Economics Building. The Japanese who took me told me "mate-mate" -- wait-wait.

Q After you were taken back to the Elementary School building, where were you kept?

A At the storeroom.

Q Was anybody else in that storeroom?

A Mercedes' children.

Q Any girls there?

A No.

Q During the night of September 2 did you see any girls being taken to the rooms of the Japanese?

A Yes.

Q As you left the pit did you see anybody else being taken out to the pit?

A Yes.

Q Who was that?

A My mother.

Q Have you ever seen your mother again?

A No.

Q Tell what happened the next morning, the morning of September 3.

A We were held captives that evening but next morning I was taken out from the cell.

Q What did you do?

A I was told to wash a pair of pants that was stained with blood.

Q Tell what happened on the night of September 3, 1944.

A The night of September 3, 1944, each Japanese soldier took a girl with him and Murata saw me at the storeroom and took me along with him.

Q Now, before you left the storeroom did you see any of your sisters taken by the Japanese?

A Yes.

Q Name your sisters that were taken away.

A Lourdes del Valle, Asuncion del Valle, Socorro del Valle, Filomena del Valle, Josefa del Valle.

Q Where were you taken by Murata?

A I was taken to room number 5.

Q Tell what happened in room number 5.

A When he took me to room number 5 he hugged me three times. I struggled but the third time that he hugged me I succumbed to his beastly deed.

Q Did he threaten you in that room that night?

A I was threatened with a bayonet.

Q Did he get you down on the bed?

A I was very, very weak and I was forced to lie down on the bed.

Q Did he have sexual intercourse with you?

A Yes.

Q When I speak of a man's private parts I am referring to that part of the sexual organ of a man that is used in intercourse. Do you understand that?

A Yes.

Q And when I speak of a woman's private parts I am referring to that part of her sexual organ that is used in intercourse. Do you understand that?

A Yes.

Q Did Murata place his private parts in your private parts?

A Yes.

Q Tell what happened after he finished.

A After Murata abused me I sat up on my bed and prayed.

Q What did Murata do?

A He fell asleep on the bed.

Q Had he been drinking?

A Yes.

Q Would you say that he was drunk?

A After he made his abuse he fell asleep because he was so drunk and was so tired, too.

Q On the night of September 3, 1944, were you having your monthly period?

A Yes.

Q Will you point to Murata if he is in the courtroom.

(Whereupon the witness went over and pointed to Murata, who stood up.)

LIEUTENANT BLOODWORTH: Let the record show that the witness pointed out the Accused Murata.

Q Continue your story.

A While I was sitting up on my bed praying I heard noise by some Japanese soldiers.

Q What did you do then?

A I peeped out of the window.

Q Tell what you saw.

A I saw my three sisters; I saw Masuyama bayoneting Josefa, my sister. I saw Clemencia and Filomena taken near the fence and they were bayoneted by Abe and Hirasaki. After they were bayoneted they were buried in a foxhole.

LIEUTENANT GORDON: Will the reporter read the last two questions and answers.

(Whereupon the reporter read the last two questions and answers.)

BY LIEUTENANT BLOODWORTH

Q Do you see Hirasaki in the courtroom?

A No.

Q Do you see Masuyama in the courtroom?

A Yes.

Q Will you walk over and point him out, please?

A He is the first (pointing).

LIEUTENANT BLOODWORTH: Let the record show the Witness pointed out the Accused, Masuyama.

Q (By Lieutenant Bloodworth) How far were you from the place where this bayoneting took place?

A From the place where I stand to that first post (pointing).

Q How could you see this at night?

COLONEL HAUSE: Let's have a stipulation as to the distance the witness pointed out, an agreement between the Defense and Prosecution.

LIEUTENANT BLOODWORTH: Let the record show the Witness pointed out a distance from 15 to 20 feet.

COLONEL HAUSE: Let the record show the Defense concurred in the estimate of the distance.

Q (By Lieutenant Bloodworth) How could you see that at night?

A It was a full moon, the moon was shining bright.

Q What happened after you witnessed your sisters' bayoneting?

A I jumped through a trap door in a room.

Q Where was this trap door located?

A Room No. 5.

Q Was this in the floor or in the wall?

A In the floor.

Q Where did it lead to?

A Under the house.

Q Where was Murata while you did this?

A He was asleep.

Q Where did you go after you went through the trap door?

A I stayed quite a long time under the house because Masuyama went downstairs.

Q Where did you go after you left from under the house?

A I slowly crawled to the back of the shop building and went through a fence, and I went to my uncle's house.

Q Where did you stay between the night of September 3rd and the 13th of September?

A In September, sir, I was at my father-in-law's house.

Q Where did you go from there?

A My father-in-law took me to Campanga.

Q Did you ever come back to Barili?

A Yes, it was the time when Dr. Causin excavated the dead bodies from the garrison.

Q Did you recognize any bodies?

A Yes, my father's.

Q Anybody else?

A There were other dead bodies, but I didn't recognize them?

Q During the night of September 2nd and the night of September 3rd, did you see Suginoto at the garrison on the school grounds?

A Yes.

Q Will you point out Suginoto, please? (Witness points)

LIEUTENANT BLOODWORTH: Let the record show the Witness pointed to the Accused, Sugimoto.

BY LIEUTENANT BLOODWORTH:

Q How do you know the names of those Japanese?

A My sister is a storekeeper in a market and these Japanese went to store there almost every day.

Q Did you know them before you were taken to the garrison?

A Yes.

LIEUTENANT BLOODWORTH: You may cross-examine.

CROSS-EXAMINATION

BY LIEUTENANT GORDON:

Q Mrs. Paras, I know that tragic things have happened while the Japanese were on the Island of Barili and I, as well as Lieutenant Bloodworth, want to find out the truth about these things.

A Yes, I tell all the truth.

Q I know that you would not want the wrong men to be punished, and that is why I am going to ask you some more questions.

LIEUTENANT BLOODWORTH: I object to this. It isn't a line of questioning. The Witness is under oath. I suggest he go ahead and ask his questions.

COLONEL HAUSE: What was that question. Will the reporter please read the question.

LIEUTENANT BLOODWORTH: It isn't a question. It is a statement.

LIEUTENANT GORDON: I think because of the difference of the nationalities of the witnesses and myself, as well as the prisoners, I think an introduction of this

sort will be helpful.

COLONEL HAUSE: All right, continue.

LIEUTENANT GORDON: Will you read the last question.

(Whereupon the last question was read by the reporter.)

A Yes.

Q (By Lieutenant Gordon) How long had the Japanese been in Barili before September 2nd?

A They were in Barili.

Q But how long a period? Had they been there two weeks, three weeks, or two months before this incident happened?

A They stayed there almost a year.

Q This unit under Sergeant Sugimoto had been in that town for almost a year?

A The Japanese under Suginoto stayed there for almost a year.

Q When did Sergeant Sugimoto and these men come to Barili?

A In the month of August.

Q How long had they been there before this incident happened?

A I don't know how long.

Q Approximately how long would you say?

A Almost a month. During the month of August they were there.

Q How many men were with Sergeant Suginoto in the town, if you know.

A A month they were there, the month of August.

Q How many were there?

A I don't know.

Q Was it a big unit or was it a small unit? Can you approximate the number of soldiers that came with Sugimoto to town?

A No.

Q Did you know the names of any of the other Japanese soldiers besides the ones you see in Court today?

A Yes.

Q Do you know a Japanese by the name of Yamasaki?

A Yes.

Q Did you see him in the stockade when you came to identify the prisoners?

A Yes.

Q Did you point him out as one of the men who had been in the town?

A No.

Q How many Japanese came to your house on the 2nd of September, Saturday?

A Six.

Q Did you know the names of all of them?

A I only know three of them.

Q What time of day was it?

A Seven o'clock in the evening.

Q How far is your house from the garrison?

A I don't know.

Q How long does it take to go from your house to the garrison when you walk?

A We were delayed on our way to the garrison and it took almost an hour to walk from the house to the garrison.

Q How long would it normally take for you to walk from your house to the garrison?

A I cannot say.

Q Was the store of your sister's kept at your house?

A At the market place.

Q Did you go to that store often?

A Yes, I have helped my sister sell.

Q Did you go to the store every day?

A Not every day.

Q These Japanese came to your sister's store quite often, is that not so?

A Yes.

Q By coming there, you became acquainted with them and got to know them?

A Yes.

Q Did any other incident happen in this town while Sergeant Sugimoto and his unit was there before this one?

A Yes.

Q Were the Japanese troops under Sugimoto known by the other residents of the town?

A Some, some were not.

Q Would you say they were feared or disliked by the people of the town?

A They were disliked.

Q Do you recall that during the month of August you did not see Sergeant Sugimoto for a period of some days?

A Yes.

Q Do I understand that he went away from the town, as far as you know?

LIEUTENANT BLOODWORTH: May I ask the Defense Counsel to state what he expects to prove by this type of questioning in relation to Sergeant Sugimoto's being gone in August?

LIEUTENANT GORDON: Wasn't it for the period of the month of August?

LIEUTENANT BLOODWORTH: This witness can only testify as to what happened in September.

COLONEL HAUSE: I suggest the Defense stick to the Charge and Specifications and dates that pertain to the Charge and Specifications. The incident happened in September and the questioning has to do with August.

BY LIEUTENANT GORDON:

Q Do you recall whether Sugimoto was absent from the town at any time slightly before this incident about which you talked?

A I don't remember.

COLONEL HAUSE: That is the same question and should be stricken from the record. The Defense has been instructed to stick to the dates. Now you're going right back to August again.

LIEUTENANT BLOODWORTH: Sir, may I state here that the expected proof will involve a couple or two alleged atrocities that did occur in August, so even though this witness has not testified to that we will withdraw our objection if he wants to ask the question.

COLONEL HAUSE: What does the Defense have in mind to prove by bringing in the month of August?

LIEUTENANT GORDON: Sergeant Suginoto and some of his men left the town and did not return to it before the night the entire unit moved out and the period of time these atrocities were alleged to have been committed was during the time he was absent.

LIEUTENANT BLOODWORTH: We will withdraw our objection, sir, in regard to this questioning.

COLONEL HAUSE: The Commission still stands by its decision regardless of the wishes of the Prosecution once they entered their objection.

LIEUTENANT GORDON: Do I understand my question is objectionable to the Commission?

COLONEL HAUSE: The Commission's ruling still stands that you will confine your questioning to the August or September dates.

LIEUTENANT GORDON: No further questions.

COLONEL HAUSE: Any further questions by the Prosecution?

LIEUTENANT BLOODWORTH: No further questions.

COLONEL HAUSE: The Commission will state that we have talked to both the Prosecution and the Defense and there seems to be a little misunderstanding as to the objection and the reason the objection was made and sustained by the law member. Therefore, in view of the fact that the Charge and Specifications read, "On or about September 2", the objection is not sustained and the Defense may ask questions pertaining to atrocities alleged to have been committed in August that are connected with this case.

LIEUTENANT GORDON: I don't understand your answer regarding Sugimoto's absence from the town. What I want to know is do you recall whether you did not see Sergeant Sugimoto come to the store for any period of time before or after the second of September?

A I didn't see Sugimoto. I did not see Sugimoto at the store with my sister. I only saw those Japanese soldiers under him.

LIEUTENANT GORDON: No further questions.

COLONEL HAUSE: Questions by the Commission? There appear to be none. The Witness will be excused.

(Witness excused.)

The Commission will take a ten-minute recess.

(Short recess.)

COLONEL HAUSE: The Commission is in session and the courtroom will be open.

LIEUTENANT FLEMING: Sir, all the members of the Commission are present except Captain Lutz; the Prosecution staff is present, the Accused are present together with the Defense and the Prosecution is ready to

proceed.

COLONEL HAUSE: Proceed.

LIEUTENANT FLEMING: The Prosecution calls as its next Witness, Mrs. Helen Causin Morales.

MRS. HELEN CAUSIN MORALES

called as a Witness on behalf of the Prosecution being first duly sworn was examined and testified as follows through Interpreter Zosa:

DIRECT EXAMINATION

BY LIEUTENANT FLEMING:

Q Will you state your name?

A Helen Causin Morales.

Q State your age.

A 40.

Q What is your nationality?

A Filipino.

Q What is your occupation?

A Housekeeper.

Q Where do you live?

A Barili, Cebu.

Q How long have you lived in Barili, Cebu?

A Since birth.

Q Were you living in Barili during the months of August and September in the year, 1944?

A Yes.

Q During that period were you apprehended by the Japanese in Barili?

A The month of September.

Q What date in September?

A September 2, 1944.

Q Will you tell us what happened on the second of September, 1944?

A At about 10 o'clock in the evening of September 2, 1944, I was arrested by some Japanese soldiers together with my children.

Q Will you name these children that you mention were arrested with you, and at the same time will you please state their ages?

A Flora Morales, my daughter, 18 years old; Victor Morales, my son, 10 years old; my son Cecilio Morales, 5 years old; no more.

Q Upon arriving at the garrison did you discover any other members of your family held there as prisoners?

A Yes, I saw.

Q Will you state the names of these people, their relationship and ages?

A I saw my father, Procopio Causin, 67 years old; I saw my mother, Maria Causin, 66 years old; I saw my sister, Mercedes Roa, 38 years old; I saw my niece, Maria Christina Roa, 16 years old; I saw my niece Soledad Roa, 7 years old; I saw my nephew, Demetrio Roa, 5 years old; I saw Manuel Roa, my nephew, 3 years old. No more.

Q Since seeing these members of your family in the garrison, have you ever see any of them alive since then?

A No more, I did not see them any more.

Q Did anything unusual occur while you were on the way to the garrison?

A I heard the women screaming.

Q Did you see anything else?

A I saw Natividad Del Valle's family taken to the pit near the school toilet.

Q Now, let's have the Witness listen to this question. I want to repeat that. My question, I will state again, was, "Did you see anything unusual on the way to the garrison?"

A I saw the Japanese soldiers with the girls in their arms.

Q Where did you see these Japanese soldiers with these girls.

A They were from the Home Economics Building toward the Elementary School Building.

Q Will you tell us just what happened after your arrival at the garrison?

A When I was at the garrison, Sugimoto came and investigated me and asked me my name and who I was.

Q What was done with you after the investigation?

A I was released and was sent home.

Q Do you know why you were released?

A I lied to him; I told him that I am not a member of the Causin family, but belonged to the Morales family.

Q Were any of these members of the Causin family that you saw prisoners in the garrison that night, members of the guerrilla forces?

A No.

Q Were any of those members that you saw there that night given a trial while held as prisoners?

A No.

Q While in the garrison, did you see any Japanese drinking?

A Yes.

Q Would you say that these Japanese were drunk?

A Yes, they were drunk.

Q While in the garrison did you see the Del Valle family taken out of the building, taken anywhere?

A I saw the Del Valle family taken to the pit near the school toilet.

Q Was Natividad Del Valle Paras with this group taken to the pit?

A She was taken last.

Q What members of your family were released with you after the investigation by Sugimoto.

A I was released with my three children.

Q Will you name those children?

A Victor Morales, Cecilia Morales and Flora Morales.

Q Did you hear any strange noises while at the garrison?

A Yes, when those captives were taken, the captives pleaded not to be taken away.

Q After your release from the garrison, did you ever discover any bodies?

A Yes.

Q Have you ever seen any members of your family with the exception of those children you said were released with you alive again?

A None.

Q Can you tell us whose bodies you discovered at a later date?

A Yes.

Q Will you tell us whose bodies those were?

A Yes.

Q Would you say that these Japanese were drunk?

A Yes, they were drunk.

Q While in the garrison did you see the Del Valle family taken out of the building, taken anywhere?

A I saw the Del Valle family taken to the pit near the school toilet.

Q Was Natividad Del Valle Paras with this group taken to the pit?

A She was taken last.

Q What members of your family were released with you after the investigation by Sugimoto.

A I was released with my three children.

Q Will you name those children?

A Victor Morales, Cecilia Morales and Flora Morales.

Q Did you hear any strange noises while at the garrison?

A Yes, when those captives were taken, the captives pleaded not to be taken away.

Q After your release from the garrison, did you ever discover any bodies?

A Yes.

Q Have you ever seen any members of your family with the exception of those children you said were released with you alive again?

A None.

Q Can you tell us whose bodies you discovered at a later date?

A Yes.

Q Will you tell us whose bodies those were?

A I saw the bodies of Procopio Causin, Maria Causin, Tomas Del Valle, at the pit near the school toilet.

Q How were these bodies identifiable?

A Including my mother, the clothing of my mother was still intact and I recognized the comb. I recognized the clothing of my father and the belt.

Q Can you tell us exactly where these bodies were found?

A In the pit behind the school toilet.

Q Was that on the garrison grounds? Was this pit on the garrison grounds?

A Yes.

LIEUTENANT FLEMING: You may cross-examine.

CROSS EXAMINATION

BY LIEUTENANT GORDON:

Q When you were taken to the garrison, were all the people put in the same room?

A They were all in a room.

Q Did Sugimoto question everyone in the same room?

A They were not questioned.

Q Didn't you say that Sugimoto spoke to you and questioned you?

A Yes, he questioned me but he did not question the rest.

Q In what language did Sugimoto speak?

A He spoke in a bamboo English.

Q Did he have any interpreters there?

A No, at the time he questioned me, there was no interpreter -- he was by himself.

Q Did you understand his bamboo English?

A Yes.

Q Do you understand my English?

A I understand a little bit.

Q What do you mean when you say these soldiers were drunk?

A Whenever I was at the garrison, these Japanese soldiers could not walk straight. They grabbed my sister in a drunk way.

Q How many Japanese soldiers were there?

A Many.

Q How many approximately?

A About eight of them.

Q Do you know whether any trials of the other civilians of Barili might have been held in some other room of the

school house?

A They were not given trials.

Q How do you know they weren't given trials?

A When we were first taken to the Home Economics Building, we were not investigated at all. We were taken away.

Q Taken away from where?

A From the Home Economics Building to the pit near the school toilet.

Q Did you see them from the window being taken to the pit?

A I was on the school ground and I could see it very well.

Q Then after you were questioned by Sugimoto, you were taken out of the room and went to the school grounds?

A I was on the school ground and he approached me and asked me who I am.

Q Then you were never inside the Home Economics Building?

A No.

Q Were the other civilians inside the Home Economics Building?

A The civilians were taken upstairs. I was left outside the Home Economics Building and later Sugimoto came.

Q While those other civilians were upstairs, you don't know whether they were questioned or not?

A Who will investigate them with Sugimoto out of the building?

Q I am asking you a question; will you please answer it? Will the Reporter please repeat that question?

(The question was read by the Reporter.)

A I know they were not investigated because Sugimoto is always the one giving investigations and he was not

there in the Home Economics Building.

Q But you do not know whether they were investigated by anybody else, do you?

A No.

LIEUTENANT GORDON: That is all, Sir.

COLONEL HAUSE: Any further questions by the Prosecution?

LIEUTENANT FLEMING: No questions.

EXAMINATION BY THE COMMISSION

BY COLONEL HAUSE:

Q Does the witness recognize any of these Japanese he sees over here on my right?

A Yes.

Q Which one?

A He is the one who arrested my father (pointing).

Q What is his name?

A Masuyama.

COLONEL HAUSE: Does that check?

LIEUTENANT GORDON: His name is Masuyama.

COLONEL HAUSE: Let the record show the witness pointed out Masuyama.

BY COLONEL HAUSE:

Q What was the date that this incident occurred?

A September the 2nd, 1944.

Q Do you recognize any other Japanese here?

A Yes, Sugimoto, the most notorious captain (pointing).

COLONEL HAUSE: Does that identification check?

LIEUTENANT GORDON: That is right.

COLONEL HAUSE: Let the record show that the witness pointed to the Accused, Sugimoto.

BY COLONEL HAUSE:

Q Any other?

A No more.

COLONEL HAUSE: Any further questions?

LIEUTENANT BLOODWORTH: I request the witness be excused.

COLONEL HAUSE: There being no further questions, the witness will be excused.

(Witness excused.)

LIEUTENANT BLOODWORTH: The Prosecution calls as its next witness Hospicio Aguilar.

HOSPICIO AGUILAR

called as a witness on behalf of the Prosecution, being first duly sworn, was examined and testified as follows through Interpreter Batuʒan:

DIRECT EXAMINATION

BY LIEUTENANT BLOODWORTH:

Q State your name.

A Hospicio Aguilar.

Q How old are you?

A Sixty-one years old.

Q What is your nationality?

A I am a Filipino.

Q What is your occupation?

A I am a farmer.

Q Where do you live?

A I live in Barili, Cebu.

Q How long have you lived in Barili?

A Since my birth.

Q Were you living in Barili during the months of August and September 1944?

A Yes, sir.

Q Were any members of your family taken prisoner by the Japanese in Barili in the month of August 1944?

A They were apprehended in August.

Q When was your son-in-law, Filomeno Gonzales, apprehended?

A He was apprehended on August the 8th, 1944.

Q Have you ever seen him since he was taken prisoner by the Japanese?

A No more.

Q When were your two daughters apprehended by the Japanese?

A They were apprehended on September the 2nd, 1944.

Q What were their names?

A Their names are Rosa and Margarita Aguilar.

Q How old was Rosa?

A About twenty-six years old.

Q How old was Margarita?

A Margarita is between twenty-one and twenty-two years old.

Q At a later time did you have occasion to see the bodies of Rosa and Margarita?

A When they were killed I saw the bodies of my two daughters.

Q Where did you see these bodies?

A I found them at the Japanese garrison.

Q Were they buried?

A They were buried but they were not very deep. They were buried in such a way that their bodies were visible.

Q Did you notice the wounds on the bodies?

A Yes.

Q What would you say had inflicted the wounds, in your own opinion, what instrument?

A To my mind and knowledge they were wounds inflicted by the use of bayonets. I saw two bayonet wounds in the upper breast and one at the abdomen.

Q On what body were those wounds?

A I saw those bayonet wounds on the body of Rosa.

Q At the time that Rosa was taken to the garrison, was she pregnant?

A She was pregnant.

Q How many months in pregnancy?

A Six months pregnant.

LIEUTENANT BLOODWORTH: You may cross examine.

LIEUTENANT GORDON: No questions, your Honor.

LIEUTENANT BLOODWORTH: Any questions by the Commission?

EXAMINATION BY THE COMMISSION

BY COLONEL HAUSE:

Q On what date did this killing take place?

A On September 12th, 1944, sir.

Q On September 12th, 1944?

A Yes.

Q Is that the date you saw the bodies or the date the killing took place?

A According to the information received, the two daughters were killed on September the 12th, 1944 and this letter showed the two dead bodies of the same date.

Q Do you recognize any of the Japanese over on my right?

A I know some of them.

Q Point out the ones you know and give me their names.

A This is Captain Sugimoto (pointing); (witness changing identification); that is Sugimoto and this is Masuyama. If I am not mistaken, this is Captain Sugimoto and Masuyama.

COLONEL HAUSE: Does the identification check?

LIEUTENANT GORDON: Yes, now I would like to show that he pointed out Masuyama as Sugimoto and then corrected it.

COLONEL HAUSE: The record will show that the witness pointed wrongly to the Accused but later corrected those names.

BY COLONEL HAUSE:

Q Can you identify any other?

A I know all those Japanese who stayed in Barili by their appearance but I could not tell the name of each now.

Q Which ones did you see in Barili in the beginning of September 1944?

A I saw all of them.

COLONEL HAUSE: Any questions by the Prosecution?

LIEUTENANT BLOODWORTH: Yes, two more questions, sir.

REDIRECT EXAMINATION

BY LIEUTENANT BLOODWORTH:

Q Were you taken to the garrison as a prisoner by the Japanese?

A No, sir.

Q Did you see anybody killed at the garrison?

A Yes, sir, I saw.

Q Who did you see?

A The two definite persons I saw were my two daughters and upon seeing them, I cried.

Q Your two daughters were dead at the time you saw them, is that correct?

A Yes, sir, they were dead, killed.

LIEUTENANT BLOODWORTH: No further questions.

LIEUTENANT GORDON: No further questions.

COLONEL HAUSE: If no further questions, the witness will be excused.

(Witness excused.)

LIEUTENANT BLOODWORTH: The Prosecution calls as its next witness, Dr. Teodosio Causin.

DR. TEODOSIO CAUSIN

called as a witness on behalf of the Prosecution, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY LIEUTENANT BLOODWORTH:

Q State your name.

A Teodosio Causin.

Q How old are you?

A Thirty-five.

Q What is your occupation?

A Physician.

Q What is your nationality?

A Filipino.

Q Where do you live?

A Barili, Cebu.

Q How long have you lived in Barili?

A I have lived in that town since I was six, since I was a boy of six years old.

Q Were you living in Barili during the months of August and September 1944?

A Yes, sir.

Q Are you engaged in the general practice of medicine?

A Yes, sir.

Q Where do you practice?

A In Barili, Cebu.

Q How long have you practiced in medicine?

A I have been practicing since 1937 when I graduated.

Q Where did you obtain your medical degree?

A College of Medicine, University of Santo Tomas.

Q How many years of medical schooling did you have?

A Seven years.

Q Did you ever have occasion to examine any bodies in Barili?

A Yes, sir, I examined several bodies.

Q When did you examine these bodies?

A Somewhere around September the 14th, approximately.

Q Where did you find the bodies?

A The first body I found, the first, in front of the Central School building. The first body I found was that of Rosa Aguilar, then near that body was the body of Margarita Aguilar. Then on the second digging, after two or three days, I found the bodies of Soledad Roa, Cristina Roa, and another body which I could not identify.

Q Now, before you continue, Doctor, will you describe the location of where you found the bodies that you have just mentioned with reference to any buildings on the school grounds?

A In front of the central school building the Japanese dug trenches. I found the body of Rosa Aguilar around five to ten feet from the stairs of the central school building. They were placed in the trenches and covered with earth.

Q What types of wounds or what instruments would you say caused the death of these Filipinos?

A They were bayonet wounds thrust in the breast and stomach of Rosa Aguilar. The same thing was on the body of Margarita Aguilar.

Q How did you identify these bodies?

A I could identify from their features because I knew them just personally. They had been staying in Barili and their features were not yet decomposed; their bodies were not yet decomposed.

Q Did you find any members of the Del Valle family at this spot?

A I could not conclude fully the bodies of the two Del Valle girls, the daughters of Teresa Del Valle.

Q Did you know they were members of the Del Valle family?

A Yes, I am very sure of that.

Q Did you dig anyplace else on the school grounds?

A Yes, in front of the home economics building we dug the three children, namely, Bingkoy Roa and the infant daughter of Lourdes Del Valle, and Boboy Roa. Bingkoy Roa and Boboy Roa were actually Manuel Roa and Demetrio Roa.

Q How old were the other two children?

A Binkoy was around two years old and Boboy more than 1 year old.

Q What type of wounds were inflicted on these bodies?

A I think Bingkoy was strangulated and Boboy was hit in the head here and was also strangulated; in fact, I saw the rope still around the neck.

Q Did you find any bayonet wounds on the bodies?

A I did not find bayonet wounds on the bodies.

Q Did you dig anyplace else on the school grounds?

A We dug in the pit near the house of Eustaquio Causin.

Q When was that?

A That was around the month of November.

Q And did you find any bodies there?

A Yes, we found several bodies, but the bodies I was able to identify were that of Procopio Causin and Maria Noel Causin.

Q How did you identify those bodies?

A The body of Procopio Causin was able to be identified because of the belt and since he was my uncle I could easily distinguish the belt he was wearing. That of Maria Noel Causin, who is my aunt, we could identify by the comb she was wearing.

Q Did you ever find the body of Justino Paras?

A Yes, on the first day we found the body of Justino Paras under the house of Eustaquio Causin.

Q How far is that house from the pit where the other bodies were?

A That was around approximately twenty yards from the pit.

Q Do you know how that body got over under the house?

A Yes, from the story of Eustaquio Causin, that body must have run after he was bayoneted, he tried to escape.

LIEUTENANT GORDON: I object to this question on the ground that this witness cannot testify as to his own knowledge how this body came there. It is hearsay evidence from what he heard.

COLONEL HAUSE: The Court ruling on which we work, this hearsay evidence will be admissible for probative value. The witness will continue.

LIEUTENANT GORDON: Exception noted.

A I presume that this body of Justino, after he was bayoneted, he tried to run away and he succeeded in running up to this distance under the house of Eustaquio Causin, and probably he died there from hemorrhage.

Q How far did you say it was from the pit to the house?

A Approximately twenty yards from the pit.

Q And what type of wounds did you find on the body of Justino Paras?

A They were bayonet wounds because I saw in the ribs just under the ribs the membrane lining, the lungs were still intact and I saw the big hole in the chest. It was a bayonet wound.

LIEUTENANT BLOODWORTH: You may cross-examine.

CROSS-EXAMINATION

BY LIEUTENANT GORDON:

Q How was it that you did the digging of disintering these bodies? Why did you do this disintering of these bodies?

A I cannot hear clearly.

Q Why did you do the disintering of these bodies?

A I was curious to find out where my uncle and my aunt were and my other relatives.

Q It wasn't for any official reason, was it?

A There was no official reason.

LIEUTENANT GORDON: That is all.

COLONEL HAUSE: Any questions by the Commission?

EXAMINATION BY THE COMMISSION

Q (By Colonel Hause) Have you seen these Japanese on my right down where you lived during the month of September?

A Yes, I can recognize some of them. I saw some of them then.

Q How many out of the six?

(Whereupon the witness walked over to the Accused.)

A I can recognize four of them.

Q Do you know their names?

A Yes, I remember their names.

Q Will you point out each one and state his name.

A This is Masuyama, this is Abe, this is Kawano; the first one there is Sugimoto.

COLONEL HAUSE: Let the record show that the witness pointed out those four and the identification checked.

Q (By Colonel Hause) On what date did you see these four down in your town?

A They were there for several months in my town.

Q What month?

A Since the month of June, Masuyama and Abe were in my town. In the month of August Sugimoto arrived with Kawano

and the other Japs which I could not remember.

Q Were they there the latter part of September, 1944?

A They were all there the latter part of September.

COLONEL HAUSE: The witness will be excused.

(Witness excused)

COLONEL HAUSE: At this time the Commission will recess until 1330 this afternoon.

(Whereupon, at 1120 hours, a recess was taken until 1330 hours, 8 April 1945.)

COLONEL HAUSE: The Commission will be in session.

LIEUTENANT BLOODWORTH: Sir, all members of the Commission are present, with the exception of Captain Lutz. The Prosecution is present, the Accused is present, together with Defense Counsel, and the Prosecution is ready to proceed.

COLONEL HAUSE: You may proceed.

LIEUTENANT BLOODWORTH: The Prosecution calls as its next witness Juan Mercado.

JUAN MERCADO

called as a witness on behalf of the Prosecution, being first duly sworn, was examined and testified as follows, through Interpreter Batucan.

DIRECT EXAMINATION

BY LIEUTENANT BLOODWORTH:

Q State your name.

A My name is Juan Mercado.

Q How old are you?

A 50 years old.

Q What is your nationality?

A I am a Filipino.

Q What is your occupation?

A A laborer.

Q Where do you live?

A Barili, Cebu.

Q How long have you lived in Barili?

A Since my birth.

Q Were you in Barili during the months of August and September, 1944?

A Yes, sir.

Q What was your occupation during those two months?

A I was employed by the Japanese as the assistant to the cook.

Q Where did you work?

A I was working in the Japanese garrison.

Q Was that in Barili?

A Yes, in Barili.

Q What time do you go to work in the morning?

A I work from 5:30 or 6:30 in the morning and cease working at 9:00 o'clock in the morning. Then we resumed work at 10:00 A.M. We ceased working at 4:00 o'clock, P.M.

Q Do you know or did you know Martin Deloraso?

A Yes, sir, I know him.

Q Did you ever see him mistreated?

A Yes, sir.

Q Where was this?

A I saw him mistreated and hung by the Japanese in front of the home economics building in Barili at the swing bar.

Q About when did you see this?

A I saw him in the latter part of August, 1944.

Q Show the Commission how he was hanging from the swinging bars.

A His hands were tied in the back and with a string tied up to the bar a Japanese pulled the rope such that he was hanging, that his two feet were only able to touch the ground,

slightly touching the ground, rather.

Q Could you recognize any Japanese mistreating Martin Deloraso?

A Yes, sir.

Q Who did you see mistreating him?

A The Japanese.

Q Will you point to any Japanese in the courtroom if you see them, if you saw them mistreating anyone, please.

A I saw this Japanese soldier (pointing).

Q What is his name?

A Masuyama.

LIEUTENANT BLOODWORTH: Let the record show the witness pointed out the Accused, Masuyama.

Is that the correct identification?

LIEUTENANT GORDON: That is correct.

WITNESS: (Continuing through Interpreter) This Japanese soldier, Kawabe.

LIEUTENANT BLOODWORTH: Is that correct?

LIEUTENANT GORDON: That is correct.

LIEUTENANT BLOODWORTH: Let the record show the witness pointed out the Accused, Kawabe.

WITNESS: (Continuing through Interpreter) Kawano (pointing).

LIEUTENANT BLOODWORTH: Let the record show the witness pointed out the Accused, Kawano.

WITNESS: (Continuing through Interpreter) Sugimoto.

LIEUTENANT BLOODWORTH: Let the record show the witness pointed out the Accused, Suginoto.

WITNESS: (Continuing) All of these were seen by me there, but I don't know the names of the rest.

COLONEL HAUSE: What was that?

A All of these Japanese were seen by me in Barili. They were there. I don't remember the others' names.

BY LIEUTENANT BLOODWORTH:

Q What did you see Kawabe doing to Martin Deloraso?

A I saw him with a piece of wood and a baseball bat.

Q What was he doing with a baseball bat?

A I saw him strike Martin with the bat (illustrating).

COLONEL HAUSE: Let the record show that the witness demonstrated how the baseball bat was used.

Q (By Lieutenant Bloodworth) What did you see Masuyama doing out there?

A I also saw Masuyama take a piece of wood and he took part in beating Martin.

Q What did you see Murata doing?

A The same thing.

Q What did you see Sugimoto doing?

A He also performed in the beating the same way the other Japanese soldiers did.

Q Did this beating take place in the morning or the afternoon?

A The beating took place from the moment Martin was hung in the morning until late in the afternoon. I saw the Japanese soldiers who passed by and took part in the beating, besides the other Japanese already mentioned above.

Q Did you see Martin Deloraso at a later time?

A Yes, I saw him hanging.

Q Did you see him hanging there the next morning?

A Yes, I saw him the next morning when I was present for work;he was already hanging dead.

Q Tell what happened the next morning.

A I was commanded by a Japanese soldier to untie the dead fellow, so I untied the rope.

Q Who commanded you to untie the dead body?

A A certain Japanese by the name of Terashima.

Q Do you see Terashima in the courtroom?

A No, sir.

Q What did you do with the body?

A A Japanese soldier commanded me with another fellow and we brought the dead body and buried it in the pit near the school toilet.

Q Were you at the garrison on the night of the 2nd of September, 1944?

A Yes, I was not in the Japanese garrison that day, but I stayed at home and I saw Japanese passing by my house.

Q Did you go to work the next day, September 3,, 1944?

A Yes, sir, I went back the following day to the Japanese garrison for my work.

Q Tell what you saw that next moring.

A The following day, early in the morning, I went to the kitchen to get the utensils which I used to work on. At the door I was met by a Japanese soldier who forbid me to get inside. That same soldier took the kettle himself and handed it to me. He handed to me rice which he

commanded me to cook. Then I asked him why I was forbid to get inside the room where I took my kettle and rice. The Japanese answered that I was forbidden to get inside that room because there were girl prisoners in that room.

Q Who was this Japanese?

A That Japanese is Abe.

Q Will you point out Abe if he is in the courtroom?

(Whereupon the Witness pointed out Abe, the Accused.)

LIEUTENANT BLOODWORTH: Let the record show that the Witness pointed out the Accused, Abe.

Q Did you see those girls that were held in the garrison at any time?

A Yes, I saw them.

Q Did you ever see them being taken to the rooms by Japanese soldiers?

A I saw those girls every time I reported for duty in the morning from the rooms where the Japanese slept I saw also the Japanese cots and mosquito nets in that same room.

Q Will you point out if you can any Japanese that you may find in the courtroom that you saw taking any of these girls into those rooms.

(Whereupon the Witness walked over to the Accused)

LIEUTENANT BLOODWORTH: Let the record show that the Witness pointed out the Accused, Masuyama. Let the record also show that the Witness pointed out the Accused, Kawano, Sugimoto, Abe, Kawabe, and Murata.

Q Did you ever see any dead bodies on the school grounds?

A Yes, I saw dead bodies in the foxholes in front of the school buildings.

Q About when did you see this?

A On the morning of September 13, 1944.

Q When did the Japanese withdraw from Barili?

A On September 13, 1944.

Q Were these bodies male or female?

A They were bodies of female persons.

Q Did you recognize any of the bodies?

A Yes, I did. There was one I didn't recognize.

Q Were they the same girls that were held by the Japanese during September?

A Yes, they were the same persons whom I saw.

Q Did you notice the wounds on the bodies?

A I was not very certain, but I saw bloodstains on their bodies.

Q Were the bodies buried?

A All the dead bodies were placed in one foxhole.

Q Who buried the bodies, do you know?

A I saw the Japanese soldiers who threw the dead bodies there.

LIEUTENANT BLOODWORTH: You may cross-examine.

CROSS-EXAMINATION

BY DIEUTENANT GORDON:

Q You have mentioned several dates in your examination, how do you remember these dates?

A I remember these dates because it was on these dates that the Japanese soldiers committed the atrocities.

Q Why did you particularly remember the dates, did you think you would have to use them again?

A I was not thinking of using these dates in the future. I only remember them because I know how to remember those important dates that things were happening in my town.

Q In the building in which your kitchen or in which your cooking was located, how many floors did it have?

A One only.

Q Was there any building occupied by the Japanese that had two floors?

A No, there was none.

Q From where you were cooking could you see what went on in the best of the buildings?

A Yes, I could see the other buildings within the school grounds.

Q I think you said that the girls were kept in the room where you did your cooking and then taken to the other rooms, is that right?

A Yes, I saw from the place where I was cooking, the girls being brought by the Japanese to certain rooms.

LIEUTENANT BLOODWORTH: For the benefit of the record, I think the Witness stated that the girls were kept in a storeroom, not in a place where they cooked.

BY LIEUTENANT GORDON:

Q Were the girls kept in the room in which you did your cooking the day that one of these Japs barred your way?

A The girls were brought by the Japs to the storeroom of the Japanese.

Q Why did the Japanese soldier bar your way into the kitchen on the morning of the second of September?

A Because the Japs were placing those girl captives in that room where they kept the food.

Q How long had you worked for the Japanese Garrison?

A Two months.

Q Were all of these men who you pointed out today in Barili during the entire two months, do you know?

A This Bugimoto went to Barili in the month of August until September. The other soldiers arrived in Barili in the latter part of August under another commander.

Q After Sugimoto came to Barili, did he ever leave it and then come back, do you know?

A No. Since his arrival in the month of August, he stayed in Barili until September when they moved out.

Q How many men were attached to this Japanese Unit under Sugimoto?

A About ten of them.

Q Did you know a corporal by the name of Hirasaki?

A Yes, sir.

Q Were there any other Japanese units in Barili at the same time that Sugimoto's unit was there?

A Yes, there were those under Muchikawa.

Q Was there another group of Japanese soldiers stationed in the same vicinity, but in another school building at the same time that Sugimoto's troops were stationed there?

A No more Japanese.

Q Do you know whether a Japanese Kempei Tai Unit was stationed in Barili at the same time that Sugimoto's Unit was there?

A I remember there was a group of Japanese Kempei Tai who were in Barili, but that was in the month of July.

Q Was there any Japanese Kempei Tai there in the month of August?

A No, there was none.

LIEUTENANT GORDON: No further questions.

COLONEL HAUSE: Any further questions by the Prosecution?

LIEUTENANT BLOODWORTH: No further questions.

COLONEL HAUSE: Any questions by the Commission. There appears to be none. The Witness will be excused.

(Witness excused.)

LIEUTENANT FLEMING: The Prosecution calls as its next Witness, Miss Hermenegilda Olandre.

HERMENEGILDA OLANDRE

called as a Witness on behalf of the Prosecution being first duly sworn was examined and testified as follows through interpreter Ma Batucan.

DIRECT EXAMINATION

BY LIEUTENANT FLEMING:

Q Will you state your name?

A Hermengilda Olandre.

Q State your age.

A 27 years old.

Q What is your nationality?

A I am a Filipina.

Q What is your occupation?

A I am a storekeeper.

Q Where do you live?

A Cebu City.

Q Were you living in Barili during the months of August and September, 1944?

A Yes, sir, I lived there.

Q How long had you been living in Barili up to that time?

A I have been living in Barili since my birth. I just moved to the city last February of 1946.

Q During the months of August and September, 1944, what was your occupation?

A I was working in the Daido, a Japanese firm.

Q What were you doing at that time, what type of work were you doing at that time?

A I used to cut Japanese clothes and exchange them with copra which the Japanese purchased from the civilians.

Q Who was your manager in that store?

A A certain Japanese called Yamasaki.

Q Was this Yamasaki a civilian?

A A civilian.

Q Did you ever have occasion to visit the garrison occupied by the Japanese troops in Barili?

A I used to pass there morning and afternoon by the Japanese garrison going to and fro to the office.

Q Was it ever necessary in connection with your work in the Daido for you to visit the garrison?

A Yes, because I got the key from the garrison where the key of the office of the Daido was kept.

Q Did you at any time on such a visit to this garrison see anything unusual or any mistreatment of people.

A Yes, I saw.

Q What did you see?

A I saw civilians being hung and mistreated.

Q What was the date, or approximately what time of the year was this?

A I don't remember the exact date, but approximately I saw those hanging in the latter part of August.

Q What were the names of these civilians?

A I saw persons hanging as follows:

Filomeno Gonzales, Teodoro Estrada, Angelo Yap, Aurelio Sasil, and there were many others whose names I could no longer recall.

Q Where were these people you have just named hanging?

A I saw these persons hanging from the bars of the swings of the school building.

Q Will you describe how these people were hung from the swing?

A I saw the hands of these persons hanging with their hands back, tied up to the swinging bar (illustrating) with feet just touching the ground.

COLONEL HAUSE: Let the record show the Witness demonstrated to the Commission how the hanging was accomplished.

BY LIEUTENANT FLEMING:

Q At the time you saw the individuals hanging from this swing, were they being mistreated?

A Yes, I saw these same persons being maltreated by the Japanese with the use of a piece of wood, sometimes with the back of the pistol, and sometimes with their own hands, they slapped.

Q Where were you when you saw this maltreatment?

A I was at the gate of the schoolbuilding.

Q What would you judge the distance to be from the gate to the garrison to the swings where these bodies were, or where these bodies were hanging?

A About 30 yards.

Q Did you recognize any of the Japanese that were maltreating these persons?

A Yes, I do.

Q Are any of those Japanese that you recognize in this courtroom?

A Yes, they are here.

Q Will you walk over and point out any of those Japanese that you saw beating these persons in the garrison building?

A (Witness pointing). This is Masuyama, (pointing.) This is Sugimoto, (pointing).

LIEUTENANT FLEMING: Let the record show the Witness pointed to Sugimoto and Masuyama.

A (Continuing) There are two Japanese soldiers which I am very definite who were those who maltreated them.

Q Were there any other Japanese present at that time?

A Yes, there were some Japanese under the command of Sugimoto.

Q Did you know the names of these Japanese?

A I know the other Japanese, Masukawa, but he is not here now.

LIEUTENANT FLEMING: You may cross-examine.

LIEUTENANT GORDON: No cross-examination.

COLONEL HAUSE: Any questions by the Commission? Seeing there are no questions by the Commission, the Witness will be excused and the Commission will take a ten-minute recess.

(Witness excused)

(Short recess)

COLONEL HAUSE: The Commission will be in session.

LIEUTENANT BLOODWORTH: Sir, all members of the Commission are present except Captain Lutz; the Prosecution is present, the Accused are present, together with their Counsel and the Prosecution is ready to proceed.

COLONEL HAUSE: Proceed.

LIEUTENANT BLOODWORTH: The Prosecution calls as its next Witness, Captain Frank S. Johnson.

FRANK S. JOHNSON

called as a Witness on behalf of the Prosecution being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY LIEUTENANT BLOODWORTH:

Q State your name?

A Frank S. Johnson.

Q Your age?

A 38.

Q What is your occupation?

A Investigating Officer, War Crimes Investigation Detachment.

Q What is your rank?

A Captain.

Q What army?

A United States Army.

Q Captain, you have or did you make an investigation at Barili, Cebu?

A I did.

Q When did you make that investigation?

A In November, 1945.

Q I hand you what has been marked Prosecution's Exhibit II for identification and ask you to tell the Commission what that is.

A This is a statement that I took from Masanori Sugimoto at the Leyte Detention Center on the 8th of December, 1945. It was signed by Masanori Sugimoto in my presence on the 10th day of December, 1945.

Q Was this read to Sugimoto before he signed it?

A It was by an interpreter.

Q Does your signature appear on this exhibit?

A It does.

Q Was Sugimoto warned of his rights before he gave this confession?

A He was.

LIEUTENANT BLOODWORTH: You may cross-examine.

LIEUTENANT GORDON: No cross-examination

COLONEL HAUSE: Any questions by the Commission? There appears to be none, and the Witness will be excused.

(Witness excused.)

LIEUTENANT BLOODWORTH: I now offer Prosecution's Exhibit No. 2 for identification into evidence and ask that it be marked, "Prosecution's Exhibit No. 2. I also request that the Prosecution be allowed to withdraw the original and substitute a certified true copy into the record.

COLONEL HAUSE: Any objection?

LIEUTENANT GORDON: No objection.

COLONEL HAUSE: So marked and so ordered.

(Prosecution's Exhibit 2 was marked and received into evidence.)

LIEUTENANT BLOODWORTH: I ask permission now to read Prosecution's Exhibit No. 2 into the record.

COLONEL HAUSE: Proceed.

"RESTRICTED

"MASANORI SUGIMOTO, after having been duly sworn, testified at POW Stockade #1, Leyte Detention Center, Tacloban, Leyte, on 8 December 1945, as follows:

"Q Will you state your full name, rank, age, marital status and your address in Japan?

"A SUGIMOTO Masanori, Sergeant Major, 33 years old, married, Kayoshimachi, Hayami Gun, Oita, Japan.

"Q Your present address?

"A 51J-42472, Leyte Detention Center, Tacloban, Leyte, Stockade No. 1.

"Q Were you on the island of Cebu?

"A Yes.

"Q Were you ever stationed at Barili, Cebu?

"A Yes.

"Q What time were you there?

"A August 1944 to September 3, 1944.

"Q During that time, did you have an occasion to arrest any civilians?

"A Yes.

"Q Where were those civilians taken that you arrested?

"A They were taken in the Sentry's House.

"Q Where was the Sentry's House located?

"A On the Barili school house grounds.

"Q How many civilians were arrested at that time?

"A Around seven or eight.

"Q Will you describe to me who those civilians were?

"A There were two children, and the rest were all women. There were three young women and two old women.

"Q What were the approximate ages of these persons?

"A The children were six and seven, the young women seventeen or eighteen years old. The old women were between thirty or forty.

"Q Why were these women and children arrested?

"A There were many suspected for having contacts with guerrillas. As Cpl HIRASAKI knows the town because he stayed longer than me, he began arresting them.

"Q Did you investigate the charges against these women and children?

"A Cpl HIRASAKI made the investigations.

"Q How long were these prisoners kept prisoners in the school grounds?

"A About three days.

"Q During that time, were there any of these women mistreated by soldiers of your garrison?

"A I didn't see them mistreated.

"Q Do you have any knowledge that they were mistreated?

"A I do not know of any case that they were mistreated.

"Q What happened to these children and women that you held prisoners?

"A I received orders from the company commander to take action.

"Q What kind of action?

"A To kill them all. So I told Cpl HIRASAKI that I must leave tomorrow morning. He made the investigation and he killed them all.

"Q Did you receive orders to kill the children as the adults?

"A There is no word about children or adults, nor ages and sexes. The company commander knows about these women and children and the company commander asked me to take action, so I do not think that there are exceptions.

"Q Who was the company commander?

"A 1st Lt. HIGASHI SUSUMU.

"Q Where was his headquarters?

"A Carcar, Cebu.

"Q To what unit did he belong?

"A ONISHI BUTAI, of the ONISHI Battalion.

"Q Who was the battalion commander?

#A Lt. Col. ONISHI.

"Q Did Lt. HIGASHI receive his orders direct from Lt Col ONISHI?

"A Yes.

"Q In what form did you receive this order to execute the civilians?

"A Written order signed by Lt HIGASHI.

"Q Did it include the names of these women and children?

"A There are no names whatsoever.

"Q Was this order sent out from the company headquarters or the battalion headquarters?

"A It came from the company headquarters.

"Q Was Cpl HIRASAKI under your direct command?

"A Yes.

"Q Did you know what Cpl HIRASAKI did with these persons?

"A He killed them.

"Q How were they killed?

"A I did not see so I do not know.

"Q Did Cpl HIRASAKI tell you how they were killed?

"A Cpl HIRASAKI didn't tell me how they were killed, but he told me that he covered their bodies after they were killed.

"Q What kind of instruments did the soldiers use to kill them?

"A I do not know. The soldiers had bayonets so I think they bayonetted them.

"Q Is Cpl HIRASAKI living now?

"A He was killed in action in Cebu.

"Q Do you know the names of any of these persons that were killed?

"A I do not remember.

"Q Did you see the bodies of these prisoners after they had been killed?

"A HIRASAKI told me where they were buried, but I did not see any bodies.

"Q Where was that place located?

"A Just in front of the school building.

"Q Was it between the school building and the sentry's house?

"A There were foxholes around the building, and there was a place where foxholes were deep. Those persons were buried in the deep foxholes.

"Q Where were you at the time the execution took place?

"A I was on the road of the school building.

"Q Who were the soldiers with Cpl HIRASAKI at that time?

"A S/Pvt KASIWARA Toshiyuki, Cpl HIRASAKI Yoshio, L/Pvt FUSIWARA Tomimatsu, Pvt ASAI Ken and Pvt HARUTA Akira.

"Q Are any of those soldiers living now?

"A They were all killed.

"Q How were they killed?

"A HIRASAKI was killed in Cebu, KUSIWARA was killed in action south of Cebu on Mt SUNOKI. HARUTA was killed in action during evacuation. ASAI Ken was killed in action in Pandan, Cebu. FUJISIWARA Tomimatsu died of sickness at Stockade #4.

"Q Were these prisoners taken all at one time and killed or were they taken separately?

"A I do not know.

"Q Can you explain why you permitted the two children, ages six and seven, to be killed?

"A I just followed the order of the company commander.

"Q Was it the policy of your company commander to kill all civilians regardless of their ages or sexes or what crimes they were charged with?

"A I was not always with the company commander but I do not think that was his policy. When I read the statement, I just followed what was there.

"Q Can you recall approximately how that order was worded?

"A I do not exactly remember. I remember only the outline. It was like this: 'I thank you for your longtime service in this garrison and tomorrow morning, I will send you one truck and before you leave tomorrow morning the prisoners which you reported must be killed.'

"Q Do you have anything further to add to your statement?

"A No, nothing more.

"Q Was threat, duress, force or coercion employed in getting this statement from you?

"A No.

"Q Was there any promise of immunity, reward or consideration given in securing this statement?

"A No, . . .

"Q Was there any promise of immunity, reward or consideration given in securing this statement?

"A No.

"/s/ MASANORI SUGIMOTO
/t/ MASANORI SUGIMOTO

"[illegible]"

"COMMONWEALTH OF THE PHILIPPINES)
)
"PROVINCE OF LEYTE)
)
"TOWN OF TACLOBAN)

"I, MASANORI SUGIMOTO, being duly sworn on oath, state that I had read to me and understood the translation of the foregoing transcription of my interrogation and all answers contained therein, consisting of three pages are true to the best of my knowledge and belief.

"/s/ MASANORI SUGIMOTO
/t/ MASANORI SUGIMOTO

"Subscribed and sworn to before me this 10th day of December, 1945.

" /s/ Frank S. Johnson
/t/ FRANK S. JOHNSON, Capt, Inf.
Investigating Officer,
War Crimes
Investigating Detachment

"COMMONWEALTH OF THE PHILIPPINES)
)
"PROVINCE OF LEYTE)
)
"TOWN OF TACLOBAN)

"I, HIDEO TANAKA, POW Stockade #1, Leyte Detention Center, Tacloban, Leyte, being duly sworn on oath, state that I truly translated the questions and answers given from English to Japanese and from Japanese to English respectively, and that after being transcribed, I truly translated the foregoing deposition containing three pages, to the witness; that the witness thereupon in my presence affixed his signature thereto.

"/s/ Hideo Tanaka
/t/ HIDEO TANAKA

"Subscribed and sworn to before me this 10th day of December, 1945.

"/s/ Frank S. Johnson
/t/ FRANK S. JOHNSON, Capt., Inf.
Investigating Officer,
War Crimes
Investigating Detachment.

"C E R T I F I C A T E

"We, FRANK S. JOHNSON, Capt., 0380235, Inf, and JUAN C. JIMENEZ, Capt, 042357, JAGS, certify that on 8 December 1945 personally appeared before us MASANORI SUGIMOTO, and according to HIDEO TANAKA, gave the foregoing answers to the several questions set forth therein; that after his testimony had been transcribed, the said MASANORI SUGIMOTO had read to him by the said interpreter the same and affixed his signature thereto in our presence.

"Tacloban, Leyte

"/s/ Frank S. Johnson
/t/ FRANK S. JOHNSON, Capt, Inf.
Investigating Officer,
War Crimes
Investigating Detachment

"10 December 1945

"/s/ Juan C. Jiminez
/t/ JUAN C. JIMENEZ, Capt JAGS

"CERTIFIED TRUE COPY:
"/s/ MANNING D. WEBSTER
"/t/ MANNING D. WEBSTER
"Capt. JAGD

"RESTRICTED"

LIEUTENANT BLOODWORTH: If it please the Commission, the Prosecution has a Witness coming from plane from Barili, Cebu, expected in today. I ask for a recess until tomorrow morning.

COLONEL HAUSE: Has the Defense any suggestion?

LIEUTENANT GORDON: I would like a continuance for putting in the Defense until 10 o'clock in the morning.

COLONEL HAUSE: Why do you name 10 o'clock.

LIEUTENANT GORDON: I understand that we may get the proceedings of the record tonight. If not, at 8:30 in the morning and I would like about an hour or hour and a half to read the record with the Defendant before proceeding.

COLONEL HAUSE: The Commission will recess until 1000 tomorrow morning, same place.

(Whereupon the Commission adjourned at 1500 hours 8 April 1946 to reconvene at 1000 hours 9 April 1946.)

RESTRICTED

CENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

AC 000.5 (5 Dec 45) LS

APO 500
5 December 1945

SUBJECT: Regulations Governing the Trials of Accused War Criminals.

TO : Commander-in-Chief, United States Army Forces, Pacific, APO 500
Commanding General, Sixth Army, APO 442
Commanding General, Eighth Army, APO 343
Commanding General, XXIV Corps, APO 235

The following rules and regulations will govern the trials of persons, units and organizations accused as war criminals:

1. ESTABLISHMENT OF MILITARY COMMISSIONS.

a. General. Persons, units and organizations accused as war criminals will be tried by military commissions to be convened by , or under the authority of, the Supreme Commander for the Allied Powers.

b. Number and Types. The commissions will be established dependent upon the number, nature of the offenses involved and the offenders to be tried. Such commissions may include, among others, international military commissions consisting of representatives of several nations or of each nation concerned, appointed to try cases involving offenses against one (1) or more nations.

2. JURISDICTION.

a. Over Persons. The military commissions appointed hereunder shall have jurisdiction over all persons charged with war crimes who are in the custody of the convening authority at the time of the trial.

b. Over Offenses.

(1) Military commissions established hereunder shall have jurisdiction over all offenses including, but not limited to, the following:

(a) The planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

U. S. A. vs SUGIMOTO, ETAL
PROSECUTION
DEFENSE
EXHIBIT No. 1.
RECEIVED 8 APRIL '46

(b) Violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory; murder or ill-treatment of prisoners of war or internees or persons on the seas or elsewhere; improper treatment of hostages; plunder of public or private property; wanton destruction of cities, towns or villages; or devastation not justified by military necessity.

(c) Murder, extermination, enslavement, deportation and other inhuman acts committed against any civilian population before or during the war, or persecutions on political, racial or religious grounds in execution of, or in connection with, any crime defined herein, whether or not in violation of the domestic laws of the country where perpetrated.

(2) The offense need not have been committed after a particular date to render the responsible party or parties subject to arrest, but in general should have been committed since or in the period immediately preceding the Mukden incident of September 18, 1931.

3. MEMBERSHIP OF COMMISSION.

a. Appointment. The members of each military commission will be appointed by the Supreme Commander for the Allied Powers, or under authority delegated by him. Alternates may be appointed by the convening authority. Such alternates shall attend all sessions of the commission, and in case of illness or other incapacity of any principal member, an alternate shall take the place of that member. Any vacancy among the members or alternates, occurring after a trial has begun, may be filled by the convening authority, but the substance of all proceedings had and evidence taken in that case shall be made known to that new member or alternate in open court before the trial proceeds.

b. Number of Members. Each commission shall consist of not less than three (3) members.

c. Qualifications. The convening authority shall appoint to the commission persons whom he determines to be competent to perform the duties involved and not disqualified by personal interest or prejudice, provided that no person shall be appointed to hear a case which he personally

investigated, nor if he is required as a witness in that case. A commission may consist of Army, Navy or other service personnel, or of both service personnel and civilians. One specially qualified member shall be designated as the law member whose ruling is final insofar as concerns the commission on an objection to the admissibility of evidence offered during the trial.

d. Voting. Except as to the admissibility of evidence, all rulings and findings of the commission shall be by majority vote, except that conviction and sentence shall be by the affirmative votes of not less than two-thirds (2/3) of the members present.

e. Presiding Member. In the event that the convening authority does not name one of the members as the presiding member, the senior officer among the members of the commission present shall preside, or such other member as the senior officer may designate.

4. PROSECUTORS.

a. Appointment. The convening authority shall designate one or more persons to conduct the prosecution before each commission. Where offenses involve nationals of more than one nation, each nation concerned, in the discretion of the convening authority, may be represented among the prosecutors.

b. Duties. The duties of the prosecutors are:

(1) To prepare and present charges and specifications for reference to a commission.

(2) To prepare cases for trial and to conduct the prosecution before the commission of all cases referred for trial.

5. POWERS AND PROCEDURE OF COMMISSIONS.

a. Conduct of the Trial. A commission shall:

(1) Confine each trial strictly to a fair, expeditious hearing on the issues raised by the charges, excluding irrelevant issues or evidence and preventing any unnecessary delay or interference.

(2) Deal summarily with any contumacy or contempt, imposing any appropriate punishment therefor.

(3) Hold public sessions except when otherwise decided by the commission.

(4) Hold each session at such time and place as it shall determine, or as may be directed by the convening authority.

b. Rights of the Accused. The accused shall be entitled:

(1) To have in advance of trial a copy of the charges and specifications clearly worded so as to apprise the accused of each offense charged.

(2) To be represented, prior to and during trial by counsel appointed by the convening authority or counsel of his own choice, or to conduct his own defense.

(3) To testify in his own behalf and have his counsel present relevant evidence at the trial in support of his defense, and cross-examine each adverse witness who personally appears before the commission.

(4) To have the substance of the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them.

c. Witnesses. The Commission shall have power:

(1) To summon witnesses and require their attendance and testimony under penalty; to administer oaths or affirmations to witnesses and other persons and to question witnesses.

(2) To require the production of documents and other evidentiary material.

(3) To delegate to the Prosecutors appointed by the convening authority the powers and duties set forth in (1) and (2), above.

(4) To have evidence taken by a special commissioner appointed by the commission.

d. Evidence.

(1) The commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or such as in the commission's opinion would have probative value in the mind of a reasonable man. The commission

shall apply the rules of evidence and pleading set forth herein with the greatest liberality to achieve expeditious procedure. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted:

(a) Any document irrespective of its classification which appears to the commission to have been signed or issued by any officer, department, agency or member of the armed forces of any government without proof of the signature or of the issuance of the document.

(b) Any report which appears to the commission to have been signed or issued by the International Red Cross or a member thereof, or by a doctor of medicine or any medical service personnel, or by an investigator or intelligence officer, or by any other person whom the commission considers as possessing knowledge of the matters contained in the report.

(c) Affidavits, depositions or other signed statements.

(d) Any diary, letter or other document, including sworn or unsworn statements, appearing to the commission to contain information relating to the charge.

(e) A copy of any document or other secondary evidence of its contents, if the original is not immediately available.

(2) The commission shall take judicial notice of facts of common knowledge, official government documents of any nation, and the proceedings, records and findings of military or other agencies of any of the United Nations.

(3) A commission may require the prosecution and the defense to make a preliminary offer of proof, whereupon the commission may rule in advance on the admissibility of such evidence.

(4) If the accused is charged with an offense involving concerted criminal action upon the part of a military or naval unit, or any group or organization, evidence which has been given previously at a trial resulting in the

conviction of any other member of that unit, group or organization, relative to that concerted offense, may be received as prima-facie evidence that the accused likewise is guilty of that offense.

(5) The findings and judgment of a commission in any trial of a unit, group, or organization with respect to the criminal character, purpose or activities thereof shall be given full faith and credit in any subsequent trial, by that or any other commission, of an individual person charged with criminal responsibility through membership in that unit, group or organization. Upon proof of membership in that unit, group or organization convicted by a commission, the burden shall be on the accused to establish by proof any mitigating circumstances relating to his membership or participation therein.

(6) The official position of the accused shall not absolve him from responsibility, nor be considered in mitigation of punishment. Further, action pursuant to order of the accused's superior, or of his government, shall not constitute a defense, but may be considered in mitigation of punishment if the commission determines that justice so requires.

(7) All purported confessions or statements of the accused shall be admissible without prior proof that they were voluntarily given, it being for the commission to determine only the truth or falsity of such confessions or statements.

e. Trial Procedure. The proceedings at each trial will be conducted substantially as follows, unless modified by the commission to suit the particular circumstances:

(1) Each charge and specification will be read, or its substance stated, in open court.

(2) The presiding member shall ask each accused whether he pleads "Guilty" or "Not Guilty".

(3) The prosecution shall make its opening statement.

(4) The presiding member may, at this or any other time, require the prosecutor to state what evidence he proposes to submit to the commission, and the commission thereupon may rule upon the admissibility of such evidence.

(5) The witnesses and other evidence for the prosecution shall be heard or presented. At the close of the case for the prosecution, the commission may, on motion of the defense for a finding of not guilty, consider and rule whether the evidence before the commission supports the charges against the accused. The commission may defer action on any such motion and permit or require the prosecution to reopen its case and produce any further available evidence.

(6) The defense may make an opening statement prior to presenting its case. The presiding member may, at this or any other time, require the defense to state what evidence they propose to submit to the commission, whereupon the commission may rule upon the admissibility of such evidence.

(7) The witnesses and other evidence for the defense shall be heard or presented. Thereafter, the prosecution and defense may introduce such evidence in rebuttal as the commission may rule admissible.

(8) The defense, and thereafter the prosecution, shall address the commission.

(9) The commission thereafter shall consider the case in closed session and unless otherwise directed by the convening authority, announce in open court its judgment and sentence, if any. The commission may state the reasons on which the judgment is based.

f. Record of Proceedings. Each commission shall make a separate record of its proceedings in the trial of each case brought before it. The record shall be prepared by the prosecutor under the direction of the commission and submitted to the defense counsel. The commission shall be responsible for its accuracy. Such record, certified by the presiding member of the commission or his successor, shall be delivered to the convening authority as soon as possible after the trial.

g. Sentence. The commission may sentence an accused, upon conviction, to death by hanging or shooting, imprisonment for life or for any less term, fine or such other punishment as the commission shall determine to be proper. The commission may also order confiscation of any property of a convicted accused, deprive that accused of any stolen property or order its delivery to the Supreme Commander for the Allied Powers for disposition as he shall find to be proper, or may order restitution with appropriate penalty in cases of default.

h. Approval of Sentence. No sentence of a military commission shall be carried into effect until approved by the officer who convened the commission, or his successor. Such officer shall have authority to approve, mitigate, remit in whole or in part, commute, suspend, reduce or otherwise alter the sentence imposed, or (without prejudice to accused) remand the case for rehearing before a new military commission; but he shall not have authority to increase the severity of the sentence. No sentence of death shall be carried into execution until confirmed by the Supreme Commander for the Allied Powers. Except as herein provided, the judgment and sentence of a commission shall be final and not subject to review.

6. RULE MAKING POWER.

Supplementary Rules and Forms. Each commission shall adopt rules and forms to govern its procedure, not inconsistent with the provisions hereof, or such rules and forms as may be prescribed by the convening authority or by the Supreme Commander for the Allied Powers.

By command of General MacARTHUR:

H. W. ALLEN,
Colonel, A.G.D.,
Asst Adjutant General.

MASANORI SUGIMOTO, after having been duly sworn, testified at POW Stockade #1, Leyte Detention Center, Tacloban, Leyte, on 8 December 1945, as follows:

Q Will you state your full name, rank, age, marital status and your address in Japan?
A SUGIMOTO Masanori, Sergeant Major, 33 years old, married, Kayoshimachi, Hayami Gun, Oita, Japan.

Q Your present address?
A 51J-42472, Leyte Detention Center, Tacloban, Leyte, Stockade No. 1.

Q Were you on the island of Cebu?
A Yes.

Q Were you ever stationed at Barili, Cebu?
A Yes.

Q What time were you there?
A August 1944 to September 3, 1944.

Q During that time, did you have an occasion to arrest any civilians?
A Yes.

Q Where were those civilians taken that you arrested?
A They were taken in the Sentry's House.

Q Where was the Sentry's House located?
A On the Barili school house grounds.

Q How many civilians were arrested at that time?
A Around seven or eight.

Q Will you describe to me who those civilians were?
A There were two children, and the rest were all women. There were three young women and two old women.

Q What were the approximate ages of these persons?
A The children were six and seven, the young women seventeen or eighteen years old. The old women were between thirty or forty.

Q Why were these women and children arrested?
A There were many suspected for having contacts with guerrillas. As Cpl HIRASAKI knows the town because he stayed longer than me, he began arresting them.

Q Did you investigate the charges against these women and children?
A Cpl HIRASAKI made the investigations.

Q How long were these prisoners kept prisoners in the school grounds?
A About three days.

Q During that time, were there any of these women mistreated by soldiers of your garrison?
A I didn't see them mistreated.

Q Do you have any knowledge that they were mistreated?
A I do not know of any case that they were mistreated.

Q What happened to these children and women that you held prisoners?
A I received orders from the company commander to take action.

Q What kind of action?
A To kill them all. So I told Cpl HIRASAKI that I must leave tomorrow morning. He made the investigation and he killed them all.

U. S. A. vs SUGIMOTO, ETAL
PROSECUTION /s/ M.S.
~~DEFENSE~~ EXHIBIT No.
RECEIVED 8 APRIL '46

Q Did you receive orders to kill the children as well as the adults?
A There is no word about children or adults, nor ages and sexes. The company commander knows about these women and children and the company commander asked me to take action, so I do not think that there are exceptions.

Q Who was the company commander?
A 1st Lt HIGASHI SUSUMU.

Q Where was his headquarters?
A Carcar, Cebu.

Q To what unit did he belong?
A ONISHI BUTAI, of the ONISHI Battalion.

Q Who was the battalion commander?
A Lt Col ONISHI.

Q Did Lt HIGASHI receive his orders direct from Lt Col ONISHI?
A Yes.

Q In what form did you receive this order to execute the civilians?
A Written order signed by Lt HIGASHI.

Q Did it include the names of these women and children?
A There are no names whatsoever.

Q Was this order sent out from the company headquarters or the battalion headquarters?
A It came from the company headquarters.

Q Was Cpl HIRASAKI under your direct command?
A Yes.

Q Did you know that Cpl HIRASAKI did with these persons?
A He killed them.

Q How were they killed?
A I did not see so I do not know.

Q Did Cpl HIRASAKI tell you how they were killed?
A Cpl HIRASAKI didn't tell me how they were killed, but he told me that he covered their bodies after they were killed.

Q What kind of instruments did the soldiers use to kill them?
A I do not know. The soldiers had bayonets so I think they bayonetted them.

Q Is Cpl HIRASAKI living now?
A He was killed in action in Cebu.

Q Do you know the names of any of these persons that were killed?
A I do not remember.

Q Did you see the bodies of these prisoners after they had been killed?
A HIRASAKI told me where they were buried, but I did not see any bodies.

Q Where was that place located?
A Just in front of the school building.

Q Was it between the school building and the sentry's house?
A There were foxholes around the building, and there was a place where foxholes were deep. Those persons were buried in the deep foxholes.

/s/ M.S.

Q Where were you at the time the execution took place?
A I was on the road of the school building.

Q Who were the soldiers with Cpl HIRASAKI at that time?
A S/Pvt KASIWARA Toshiyuki, Cpl HIRASAKI Yoshio, L/Pvt KUSIWARA Tominatsu, Pvt ASAI Ken and Pvt HARUTA Akira.

Q Are any of those soldiers living now?
A They were all killed.

Q How were they killed?
A HIRASAKI was killed in Cebu, KUSIWARA was killed in action south of Cebu on Mt SUNOKI. HARUTA was killed in action during evacuation. ASAI Ken was killed in action in Pandang, Cebu. KUSIWARA Tominatsu died of sickness at Stockade #4.

Q Were these prisoners taken all at one time and killed or where they taken separately?
A I do not know.

Q Can you explain why you permitted the two children, ages six and seven, to be killed?
A I just followed the order of the company commander.

Q Was it the policy of your company commander to kill all civilians regardless of their ages or sexes or what crimes they were charged with?
A I was not always with the company commander but I do not think that was his policy. When I read the statement, I just followed what was there.

Q Can you recall approximately how that order was worded?
A I do not exactly remember. I remember only the outline. It was like this: "I thank you for your longtime service in this garrison and tomorrow morning, I will send you one truck and before you leave tomorrow morning the prisoners which you reported must be killed."

Q Do you have anything further to add to your statement?
A No, nothing more.

Q Was threat, duress, force or coercion employed in getting this statement from you?
A No.

Q Was there any promise of immunity, reward or consideration given in securing this statement?
A No.

/s/ MASANORI SUGIMOTO
MASANORI SUGIMOTO

COMMONWEALTH OF THE PHILIPPINES)
)
PROVINCE OF LEYTE)
)
TOWN OF TACLOBAN)

I, MASANORI SUGIMOTO, being duly sworn on oath, state that I had read to me and understood the translation of the foregoing transcription of my interrogation and all answers contained therein, consisting of three pages are true to the best of my knowledge and belief.

/s/ MASANORI SUGIMOTO
/t/ MASANORI SUGIMOTO

Subscribed and sworn to before me this 10th day of December, 1945.

/s/ Frank S. Johnson
/t/ FRANK S. JOHNSON, Capt. Inf.
Investigating Officer, War Crimes
Investigating Detachment.

COMMONWEALTH OF THE PHILIPPINES)
)
PROVINCE OF LEYTE)
)
TOWN OF TACLOBAN)

I, HIDEO TANAKA, POW Stockade #1, Leyte Detention Center, Tacloban Leyte, being duly sworn on oath, state that I truly translated the questions and answers given from English to Japanese and from Japanese to English respectively, and that after being transcribed, I truly translated the foregoing deposition containing three pages, to the witness; that the witness thereupon in my presence affixed his signature thereto.

/s/ Hideo Tanaka
/t/ HIDEO TANAKA

Subscribed and sworn to before me this 10th day of December, 1945.

/s/ Frank S. Johnson
/t/ FRANK S. JOHNSON, Capt. Inf.
Investigating Officer, War Crimes
Investigating Detachment.

C E R T I F I C A T E

We, FRANK S. JOHNSON, Capt, 0380235, Inf, and JUAN C. JIMENEZ, Capt, 042357, JAGS, certify that on 8 December 1945 personally appeared before us MASANORI SUGIMOTO, and according to HIDEO TANAKA, gave the foregoing answers to the several questions set forth therein; that after his testimony had been transcribed, the said MASANORI SUGIMOTO had read to him by the said interpreter the same and affixed his signature thereto in our presence.

Tacloban, Leyte

/s/ Frank S. Johnson
/t/ FRANK S. JOHNSON, Capt, Inf.
Investigating Officer, War Crimes
Investigating Detachment.

10 December 1945

/s/ Juan C. Jimenez
/t/ JUAN C. JIMENEZ, Capt JAGS

CERTIFIED TRUE COPY:

(2067)

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

UNITED STATES OF AMERICA	)	
-vs-	)	
MASANORI SUGIMOTO MASAYOSHI MURATA MASASHI MASUYAMA YUKIO KAWANO HISAO KAWABE WATARU ABE	)	PUBLIC TRIAL

VOLUME II

Pages 81 to 139, incl.

MANILA, P. I.

DATE 9 April 1946

COPY NO. 4

CERTIFICATION

THIS CERTIFIES that this Volume is a part of the Proceedings of the Military Commission appointed by Paragraph 17, Extract copy SO No. 80, Headquarters, United States Army Forces, Western Pacific, dated 5 April, 1946, in the trial of the case of the United States of America against MASANORI SUGIMOTO, MASAYOSHI MURATA, MASASHI MASUYAMA, YUKIO KAWANO, HISAO KAWABE, and WATARU ABE.

Dated 13 April 1946.

Francis A Hause

FRANCIS A. HAUSE
Colonel, CAC
President & Law Member of
Commission

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

UNITED STATES OF AMERICA	
-vs-	
MASANORI SUGIMOTO MASAYOSHI MURATA MASASHI MASUYAMA YUKIO KAWANO HISAO KAWABE WATARU ABE	PUBLIC TRIAL

Court No. 1
High Commissioner's Residence
Manila, P. I.
9 April 1946

Met, pursuant to adjournment, at 1000 hours.

MEMBERS OF THE MILITARY COMMISSION:

COLONEL FRANCIS A. HAUSE, CAC, President and Law Member
COLONEL WILLIAM R. HAMBY, CAV
LIEUTENANT COLONEL STARLEY N. BOYKIN, JR., INF
CAPTAIN WILLIAM O. LUTZ, INF
CAPTAIN GLENN W. HENDRICKS, FA

APPEARANCES:

FOR THE PROSECUTION:

1st LIEUTENANT RALPH R. BLOODWORTH, INF, Chief Prosecutor
2nd LIEUTENANT JOHN R. FLEMING, ORD, Assistant Prosecutor

FOR THE DEFENSE:

1st LIEUTENANT IVAN H. GORDON, TC, Defense Counsel

OFFICIAL INTERPRETERS FOR THE COMMISSION:

FELOMINA ZOSA
JOSE MA BATUCAN
EUSTAQUIO BAYOT
T/SGT SHIGEO MORISATO
T/SGT ROY KATO
T/4 ISAMI OSATO

I N D E X

WITNESSES

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P R O C E E D I N G S

(Pursuant to adjournment the Commission convened at 0830 hours at Court No. 1 High Commissioner's Residence Manila, P. I., 9 April 1946.

COLONEL HAUSE: The Commission will be in session.

LIEUTENANT BLOODWORTH: Sir, all members of the Commission are present with the exception of Captain Lutz, the Prosecution staff are present, the Accused are present together with their Counsel and the Prosecution is ready to proceed.

COLONEL HAUSE: You may proceed.

LIEUTENANT BLOODWORTH: In regard to the Witness that we expected up here, if the Commission please, that Witness did not arrive by plane.

The Prosecution is ready to rest, providing we can use that Witness if he does arrive before the case is finished, if the Defense has no objections.

LIEUTENANT GORDON: The Defense has no objections if, upon the Witness' arrival and use, we have a chance and an opportunity to rebut his testimony.

COLONEL HAUSE: Yes, you will be given that opportunity if the Witness appears.

The arrangement is agreeable, so continue.

LIEUTENANT GORDON: Before the Prosecution rests, sir, I would like to make a statement for the record.

In the arraignment proceedings, I waived translation of the proceedings in Japanese to the Accused because

they have their own interpreter and they have stated to me that they do not desire the proceedings translated to them into Japanese by the Official Court Interpreter.

Since it does not appear in the record that the Accused have waived the translation of the proceedings to them into Japanese, I wish to state for the record that they have waived such translation and do not desire any of the proceedings translated to them.

COLONEL HAUSE: Let the statement appear in the record and we will continue.

LIEUTENANT BLOODWORTH: The Prosecution rests.

COLONEL HAUSE: Is the Defense ready to proceed?

LIEUTENANT GORDON: The Defense is ready to proceed.

COLONEL HAUSE: Do you desire to make any opening statement?

LIEUTENANT GORDON: No, sir.

We call as our first Witness the Defendant Sergeant Sugimoto.

MASANORI SUGIMOTO

the Defendant, called as a Witness on his own behalf by the Defense, being first duly sworn, was examined and testified as follows through Interpreter Kato.

DIRECT EXAMINATION

BY LIEUTENANT GORDON:

Q What is your name?

A Masanori Sugimoto.

Q What rank did you hold in the Japanese Army in August, 1944?

A Sergeant Major in the Infantry.

Q Of what unit were you a member in August, 1944?

A The Onishi Unit.

Q In the month of August, 1944, where were you and your unit stationed?

A My unit and I were stationed in the Barili Garrison from August 18.

Q Until what date were you stationed in Barili?

A Until 13 of September, 1944.

Q From 18 of August to September 13, 1944, did you at any time leave the town of Barili?

A Yes.

Q When did you leave the town of Barili?

A On 20 of August, 1944, I left the town of Barili.

Q When did you return?

A The third of September, 1944.

Q Why did you leave the town of Barili?

A For a punitive expedition.

Q How many men from your unit did you take with you?

A Ten men and myself.

Q Were any of the men whom you took with you included in these five men sitting here?

A Among them, two were with me.

Q Who are they?

A Masayoshi Murata, and Hisao Kawabe.

Q Who was in command of that punitive expedition?

A First Lieutenant Kawahara.

Q Was there any other officer on the expedition with Lieutenant Kawahara?

A Yes.

Q What was his name, if you know?

A First Lieutenant Yutaka.

Q When you first came to Barili on the 18th of August, where had you been previously?

A Alegria.

Q When you were assigned to Barili, were you told what your duties were to be in that town?

A I was told that I was going to be sent for garrison duty in Barili.

Q While in Alegria, and during your stay in Barili, were you informed by your commanding officers regarding guerrilla activities?

A Yes.

Q What did they tell you about guerrilla activities?

A My commander told me that in the mountain called Mayana,there were some enemy guerrilla activities and security must be maintained.

Q Who was in charge of your unit in Barili?

A I was.

Q When you left on the punitive expedition on the 18th of August, who was put in charge of the unit remaining in Barili?

A I left for the punitive expedition on the 20th of August.

Q Who did you leave in charge of the unit of the soldiers remaining in Barili when you left on the punitive expedition?

A Under the order of the company commander, Corporal Hirasaki was to be left the command of the security unit in Barili.

Q On what day and at what time on that day did you return from the punitive expedition to Barili?

A On September 3 about sometime between 8 and 9 o'clock at night.

Q Did you see Corporal Hirasaki that night?

A Yes.

Q Did he make any report to you?

A Yes.

Q What report did he make to you?

A He told me, "The punitive expedition must have been fierce. We in Barili were all well and the Kempei Tai cleared the town market place and we had a dance party and had a gay time while you were away on the expedition." The Kempei Tai had as its main job reporting intelligence and they were very efficient and I related the conditions of the expedition to Hirasaki.

Q Did he report to you regarding any guerrilla activities in the town of Barili while you were gone?

A No.

Q Did he report to you whether he had to take any action against civilians in Barili while you were away.

A No, he did not say anything.

Q What did you do the rest of the night?

A You mean the night of September 3rd?

Q Yes.

A I was tired so I went to sleep soundly.

Q When did you and your unit finally leave Barili?

A 13th of September, 1944.

Q Between the time you arrived back from the expedition and until the time you finally left Barili, did Hirasaki make any further report to you about what had occurred in the town when you were away?

A No.

Q Do you recall a statement which was shown to you yesterday in which you said you had made on the 8th of December, 1945?

A Yes, I remember.

Q Are the answers to the questions put to you in that statement the truth and nothing but the truth?

A Yes.

Q And it is the whole truth?

A There are some places which are mistaken.

Q I show you a copy of the statement and ask you to point out where you think mistakes have been made.

COLONEL HAUSE: I think the witness should identify the paper that has been handed to him by his signature.

A This part here which reads Kayoshimachi should read Tateishi Machi.

LIEUTENANT GORDON: This one here wasn't signed but the one that was presented yesterday was signed by him.

COLONEL HAUSE: Let the record show that it was the same as the one that was presented yesterday.

LIEUTENANT BLOODWORTH: This is a photostat copy in Japanese. It is not the English statement that we introduced yesterday.

LIEUTENANT GORDON: At this time I am not questioning this statement. I just want the witness to state if there are any errors to point them out at this time.

Q Are there any other errors?

A No, there aren't any.

Q Do you speak English?

A I cannot understand English.

Q Do you speak bamboo English or pidgeon English?

A I only understand two or three words.

LIEUTENANT GORDON: No further questions.

COLONEL HAUSE: Any questions by the Prosecution?

CROSS-EXAMINATION

BY LIEUTENANT BLOODWORTH:

Q When did you arrive in Barili?

A 18 August 1944.

Q Where did you stay in Barili?

A I stayed with the garrison which had been in Barili before I arrived.

Q Was that garrison located the Barili school grounds?

A Yes.

Q On that Barili school grounds did you stay in the elementary school building?

A There were many buildings there and I heard that before the war it was a school.

Q What building did you have your living quarters in?

A My building was the one facing the ocean.

Q Had it formerly been a school building where school children went to school?

A I do not know.

Q Were the rest of your troops quartered in that building with you?

A Yes, they were in the same building.

Q In that building do you have a storeroom where supplies were kept?

A Yes.

Q Did you also have your office building on the school grounds, too?

A No, there was not an office.

Q Outside the school grounds were there swings supported by iron bars?

A Yes, there were swings.

Q Do you know Martin Delorosa?

A No, I did not know him.

Q Do you remember a man hanging from those swings out in the school yard one day?

A No, I haven't seen him.

Q Did you know Filomeno Gonzales?

A No, I did not.

Q Angelo Yap?

A No.

Q Aurelio Sasil?

A No.

Q Teodoro Estrada?

A No.

Q Who was your personal interpreter when you investigated guerrillas?

A Many times I spoke to the natives personally; however, when it came to speaking to the Mayor or Chief of Police I had an interpreter by the name of Henry.

Q Was his last name R-E-D-U-L-A?

A That, I don't know.

Q How long did he work for you?

A Since I went to the Alegria Garrison.

Q Did he work for you during August and September of 1944 at Barili?

A Yes.

Q During the latter part of August, wasn't he with you when you investigated four Filipinos at the constabulary building at Barili?

A I haven't made that investigation -- I didn't question anybody then.

COLONEL HAUSE: What was that complete answer?

A (Through Interpreter) I have never questioned anyone.

LIEUTENANT BLOODWORTH: (To Interpreter) Will you ask the question again, please?

A (Through Interpreter) I don't know.

BY LIEUTENANT BLOODWORTH:

Q When were the girls that you say were held in the garrison picked up in Barili?

A I remember it as on or about the 7th or 8th of September.

Q When you arrived back from your expedition, did you see any girls at the schoolgrounds.

A I did not see any.

Q On the night of September 2, 1944, do you remember talking to Henry Redula as you walked toward the garrison from Barili?

A On September 2, I was still in the mountains on the punitive expedition.

Q How many girls were picked up by your garrison in September.

A Around the 7th or 8th of September, Corporal Hirasaki brought in about seven people.

Q How many children did he bring in?

A I remember it as two.

Q Where were these civilians kept?

A In the guardhouse.

Q Where was the guardhouse located?

A Within the schoolgrounds in the barbed wire encirclement.

Q Did you ever talk to these civilians yourself?

A No.

Q Why didn't you?

A I am not connected with the intelligence at all.

Q Were you in charge of that garrison in Barili?

A Yes.

Q Were you in charge of Corporal Hirasaki?

A He is not under my direct command.

Q You ordered Corporal Hirasaki to kill the civilians, didn't you?

A I did not pass the order.

Q Who did?

A The company commander.

Q Were the children guerrillas.

A That I don't know.

Q Where was your company commander.

A Carcar.

Q How far was Carcar from Barili?

A About 20 kilometers.

Q Your company commander never came to Barili while you were there, did he?

A No.

Q How did he know you had civilians picked up?

A Corporal Hirasaki who was in charge of intelligence went to report to the company commander.

Q Do you remember talking to Mrs. Morales on the night of September 2, 1944?

A I did not speak to her.

LIEUTENANT BLOODWORTH: No further questions.

COLONEL HAUSE: Questions by the Defense?

REDIRECT EXAMINATION

BY LIEUTENANT GORDON:

Q How often did you receive messages, reports, or orders from the company commander while you were in Barili?

A I received twice while I was in Barili; once it was orders and the other one was instructions and also intelligence.

Q While you were away on the expedition, did you return to Barili and then come back to the expedition?

A No.

LIEUTENANT GORDON: No further questions, Sir.

COLONEL HAUSE: Any questions by the Commission?

EXAMINATION BY THE COMMISSION

BY COLONEL HAUSE:

Q Where is Hirasaki?

A Hirasaki died in action in the battle of Cebu.

COLONEL HAUSE: No further questions. The Witness will be excused.

(Witness excused.)

COLONEL HAUSE: The Commission will take a ten-minute recess.

(Short recess)

COLONEL HAUSE: The Commission will be in session.

LIEUTENANT BLOODWORTH: All the members of the Commission are present with the exception of Captain Lutz; the Prosecution staff is present. The Accused with Defense Counsel are present and the Prosecution is ready to proceed.

COLONEL HAUSE: You may proceed.

LIEUTENANT GORDON: The Defense calls as its next Witness the Defendant Murata.

MASAYOSHI MURATA

the Defendant, called as a Witness on his behalf, after first being duly sworn was examined and testified as follows through Interpreter Morisato.

DIRECT EXAMINATION

BY LIEUTENANT GORDON:

Q What is your name?

A Masayoshi Murata.

Q In August, 1944, what rank in the Japanese Army did you hold?

A Corporal.

Q In August, 1944, where were you stationed?

A In Barili.

Q When did you get to Barili?

A I reached Barili on the 18th of August, 1944.

Q When did you leave Barili?

A I left Barili on the 13th of September, 1944.

Q During all that time, from the 18th of August, to the 13th of September, 1944, were you in Barili?

A No, I was not.

Q Where were you?

A I was on a punitive expedition.

Q When did you leave Barili to go on a punitive expedition?

A I don't remember the exact date but I believe it was the 19th or 20th of August.

Q When did you return to Barili from that punitive expedition?

A On the evening of the 3rd of September.

Q At about what time in the evening?

A I remember that it was slightly dark at that time.

Q Were any of the other people who were accused in this case with you on that punitive expedition?

A Yes.

Q Who were they?

A Sergeant Major Sugimoto and Hisao Kawabe.

Q When you returned on the night of the 3rd of September, where did you come in Barili?

A I did not go anyplace.

Q Where were you quartered when you came back from the expedition?

A It was in Barili.

Q Where was the garrison in Barili?

A It was at a school.

Q How many buildings made up the garrison?

A I don't remember exactly, but I believe it was three or four.

Q Did you have any duties assigned to you that night?

A September 3rd?

Q Yes.

A I did not receive any word as to my duties that night.

Q Between the third of September and the thirteenth of September, when your unit finally left Barili, what were your duties?

A My duties were one of a security nature where the possibility of enemy attacks were imminent.

Q On the night of September 3rd did you see any Filipino civilians in the garrison?

A No, I did not.

Q On September 13 when your unit finally left Barili, were there any Filipino civilians kept in the garrison?

A Yes, I saw them.

Q How many were there?

A I believe it was six or seven persons.

Q Were they males, females, children, adults?

A One or two children and three or four girls, I believe.

Q Did you enquire of any of your comrades what these people were doing in the garrison?

A Yes, I asked my friends.

Q Whom did you ask?

A I asked Corporal Hirasaki.

Q Did you ask Sergeant Sugimoto?

A No, I did not ask him.

Q Why did you ask Corporal Hirasaki?

A He was in charge of intelligence, that is why.

Q Do you know what happened to these Filipino civilians after your unit left Barili?

A No, I do not know what happened to them.

Q Did you see Corporal Hirasaki after he left Barili?

A No, I was left in Carcar while Corporal Hirasaki was sent to Pangdan, so we separated -- so I do not know.

Q From the 3rd of September to the 13th of September, did you go out in the town of Barili and arrest any Filipino civilians?

A No.

LIEUTENANT GORDON: No further questions.

COLONEL HAUSE: Any cross-examination?

LIEUTENANT BLOODWORTH: Yes, sir.

CROSS-EXAMINATION

BY LIEUTENANT BLOODWORTH:

Q How many men were stationed in Barili under Sugimoto?

A Approximately twenty.

Q Did all of these men stay at the Barili school grounds?

A Yes.

Q Were these men quartered in the same building of the school grounds?

A Yes.

Q Were you quartered there?

A Yes, I was there also.

Q What was the number of the room that you stayed in?

A There was no number there so I don't know the number.

Q Was it room No. 5?

A I do not know that.

Q Was there a trap door in the floor of the room where you stayed leading down to the foxhole that surrounded the quarters there?

A Yes, there was such a thing.

Q The night of September 3rd, did you see any girls?

A No, I did not.

Q When did you first see any girls at the garrison?

A I believe it was around the 5th or 6th.

Q Do you remember talking to an American Lieutenant out at the Branch Camp 5 where you were held before you were brought to the High Commissioner's Residence?

A No, I do not remember. I remember speaking to them but I do not remember what I spoke about very clearly.

Q Do you remember that you told them that you stayed in room 5 of the elementary school building?

A I do not remember that.

Q Do you remember that you told him the next morning after you slept in your room that night you saw some girls at the garrison grounds; that is, the morning of September 4th?

A I don't remember saying any such thing.

Q Did you ever go on any drinking parties there at Barili?

A No.

Q Do you drink?

A No, I do not.

Q Did any of your fellow members of the garrison throw any parties?

A I have not seen them.

Q Did you see them taking any of the girls at the garrison to their rooms?

A I have not seen them.

LIEUTENANT BLOODWORTH: No further questions.

COLONEL HAUSE: Any further questions by the Defense?

LIEUTENANT GORDON: No questions by the Defense.

COLONEL HAUSE: Any questions by the Commission? Appearing there are no further questions the witness will be excused.

(Witness excused)

LIEUTENANT GORDON: The next witness will be the Defendant, Hisao Kawabe.

HISAO KAWABE

called as a witness on his own behalf by the Defense, having been first duly sworn, was examined and testified

as follows, through Official Interpreter.

DIRECT EXAMINATION

BY LIEUTENANT GORDON:

Q What is your name?

A Hisao Kawabe.

Q Do you understand English?

A No, I do not understand English.

Q In August, 1944, what was your rank in the Japanese Army?

A I was a Leading Private.

Q Where were you stationed in August, 1944?

A In Barili.

Q Of what unit were you a member?

A I was attached to the 1st Company of the Onishi Unit.

Q Who was your Commanding Officer while you were in Barili?

A Sergeant Major Sugimoto.

Q How long did you stay in Barili?

A From the middle of August to the middle of September.

Q During that period of time did you leave Barili at all?

A Yes.

Q When did you leave Barili?

A I don't remember exactly but I believe it was around the 20th of August.

Q Where did you go?

A First, I went to Naga.

Q Did any of the men accused along with you go to Naga with you?

A Yes.

Q Who are they?

A Sergeant Major Sugimoto and Masayoshi Murata.

Q Where did you go after leaving Naga?

A You mean the punitive expedition?

Q That is right.

A We went to Liloan and Compostela.

Q When did you return to Barili?

A I think it was on the 3rd or 4th of September.

Q While you were in Barili, what were your duties?

A I was a guard.

Q Where in Barili did you guard?

A I was guard at the Barili school.

Q Is that the school where the garrison stayed?

A Yes.

Q While you were in Barili did you guard that place every day?

A No, we alternated.

Q Where else in Barili did you guard?

A In Barili I did not guard anyplace besides the school grounds.

Q Do you recall whether there is on the school grounds any iron framework which was formerly used by the school children as swings?

A Yes, there were.

Q Did you know a man by the name of Martin Deloraso while you were in Barili?

A No, I do not know him.

Q Did you ever see a man hanging from those swinging bars?

A No, I have not seen them.

Q While you were stationed in Barili, did you have an opportunity to play baseball?

A No, I did not, and we did not have the equipment either.

Q Do you know if there were any baseball bats in the garrison?

A There were neither balls nor bats.

Q On the night of September 3rd, what time was it when you returned to Barili from the punitive expedition?

A I believe it was past eight.

Q Did you have any further duties that night?

A No.

Q What did you do that night?

A I slept.

Q What time did you go to bed?

A I believe it was a little past nine.

Q How many men slept in the same room with you?

A Nine persons.

Q How many rooms were there for the soldiers to sleep in that building?

A There were five or six rooms and I believe two were sleeping rooms for ordinary soldiers and one room for NCO's.

Q What were the other two or three rooms used for?

A They were used for storerooms, kitchens, and diningrooms.

Q Were there any soldiers asleep when you came into the room?

A There were some that were asleep and there were some that were awake.

Q Were there any Filipino civilians in the room when you went in to sleep?

A I did not see any.

Q Did you see any Filipino civilians in any of the other rooms in the building?

A No, I did not.

Q Did you know whether any Filipino civilians came into the rooms that night?

A I do not remember any.

Q Did you see any Filipina girls in the building that night?

A No, I did not.

LIEUTENANT GORDON: No further questions.

COLONEL HAUSE: Cross-examination?

CROSS-EXAMINATION

BY LIEUTENANT BLOODWORTH:

Q Do you know Henry Redula?

A Yes, I do.

Q What did he do at the garrison?

A He did not have a duty.

Q Why was he at the garrison?

A He came along from Alegria together with us.

Q Did he come to Barili with Sugimoto's unit?

A Yes.

Q Did you see him around the garrison frequently?

A Yes.

Q Do you remember being on guard duty at the garrison school grounds on the night of September 2nd, 1944?

A I was not on guard.

Q Do you remember the Del Valle family, the Causin family, and the Roa family being brought in through the

gates while you were on guard on September 2, 1944?

A I do not know of it.

Q Do you remember Henry Redula coming up to the gates that night and you challenged him?

A No, I do not remember.

Q Do you remember that when he told you that he was Henry and you recognized him, you let him come in the garrison the night of September 2, 1944?

A No.

Q What did you do on this expedition that you went out on the 20th of August, 1944?

A Mopping guerrillas in the mountains.

Q Did you catch any guerrillas?

A No.

Q Did you ever catch any guerrillas in Barili?

A I do not remember of any.

Q Do you know Martin Delorosa?

A No.

Q Do you remember telling Henry Redula the night of September 2, 1944, when you were on guard, not to go to the home economics building as there were some girls in there?

A I was not on guard on the night of September 2nd, so I do not remember of any such incident.

LIEUTENANT BLOODWORTH: No further questions.

COLONEL HAUSE: Any further questions by the Defense?

LIEUTENANT GORDON: No further questions.

EXAMINATION BY THE COMMISSION

BY COLONEL HAUSE:

Q Did Murata sleep in a room of his own?

A He was sleeping together with Sergeant Major Sugimoto and Corporal Hirasaki.

Q What was the number of the room?

A There was no number on it.

Q Did you say Sugimoto slept in the school building?

A Yes.

RECROSS-EXAMINATION

BY LIEUTENANT BLOODWORTH:

Q Did you ever go in Murata's room, the place where he slept?

A Yes, I have entered the NCO's room.

Q Did you notice on the floor of the room that there was a trap door leading down to the foxholes that surrounded the buildings?

A Yes, there was a one-meter-square hole there that was used to go out to the positions.

LIEUTENANT BLOODWORTH: No further questions.

COLONEL HAUSE: The witness will be excused.

(Witness excused)

COLONEL HAUSE: The Commission will recess until 1330.

(Whereupon, at 1140 hours, the Commission recessed until 1330 hours, 9 April 1946.)

A F T E R N O O N S E S S I O N

COLONEL HAUSE: The Commission will be in session.

LIEUTENANT BLOODWORTH: Sir, all members of the Commission are present, with the exception of Captain Lutz. The Prosecution is present, the Accused are present, together with Defense Counsel, and the Defense is ready to proceed.

COLONEL HAUSE: You may proceed.

LIEUTENANT GORDON: The Defense will call as its next Witness, Lieutenant Hajime Kawahara.

LIEUTENANT HAJIME KAWAHARA

called as a Witness on behalf of the Defense, being first duly sworn, was examined and testified as follows, through Official Court Interpreter.

DIRECT EXAMINATION

BY LIEUTENANT GORDON:

Q What is your name?

A Hajime Kawahara.

Q In August, 1944, what was your rank in the Japanese Army?

A First Lieutenant.

Q To what unit were you attached and where were you stationed in August, 1944?

A The Independent 173 Infantry Battalion was stationed at Balamban.

Q Do you recall that in the month of August, you went out on a punitive expedition?

A Yes.

Q Do you recall from what town in Cebu that expedition started?

A Naga, Cebu.

Q Do you recall whether any members of the Onishi Unit stationed at Barili were on that expedition with you?

A While I was in Naga, the first company was commanded by First Lieutenant Yutaka and came under my command.

Q Do you know whether any of these six men were on that expedition with you?

A Yes.

Q Who was on that expedition with you among these six men?

A (Pointing)

Q Do you know his name?

A The one on the extreme left as I face them is Sergeant Major Masanori Sugimoto, besides him I do not remember very clearly.

Q Do you know whether there were any other men from Sugimoto's unit on that expedition with you?

A From the first company commanded by First Lieutenant Yutaka, one platoon of men came.

Q About when did that expedition start from Naga?

A It was after the middle of August.

Q When did the expedition finish its work and return?

A About the end of August.

Q Did you return to Naga?

A Yes.

Q What was the purpose of the expedition?

A Their mission was to search out the wireless transmitters, and that was the order of the brigade.

Q After you came back to Naga at the end of August, 1944, did you immediately go out on another expedition?

A Yes, we rested about two days and went on the second punitive expedition.

Q Did the same troops go along with you on the second punitive expedition?

A No.

Q Did Sugimoto and men from his unit go on that expedition?

A He did not participate as part of my unit.

Q Do you know where they went, Sugimoto and the men of his unit?

A At that time after they came back from the first expedition, Sergeant Sugimoto and his men left my command and I don't know exactly where they went out to, but they went out somewhere on an expedition led by Sergeant Sugimoto.

LIEUTENANT GORDON: That is all.

COLONEL HAUSE: Cross-examination by the Prosecution?

CROSS-EXAMINATION

BY LIEUTENANT BLOODWORTH:

Q You say that was the latter part of August when Sergeant Sugimoto left your expedition?

A Yes.

Q Then you don't know where he went from there, is that correct?

A However, I know that he went to a separate place on an expedition.

LIEUTENANT BLOODWORTH: No further questions.

COLONEL HAUSE: Any question by the Commission? There appear to be none; the Witness will be excused.

(Witness excused.)

LIEUTENANT GORDON: I call as my next Witness, the Defendant, Masuyama.

MASASHI MASUYAMA

the Defendant, called as a Witness on his own behalf, being first duly sworn was examined and testified as follows through Interpreter Asano.

DIRECT EXAMINATION

BY LIEUTENANT GORDON:

Q What is your name?

A Masashi Masuyama.

Q In August, 1944, what was your rank in the Japanese Army?

A Leading Private.

Q What unit were you attached to and where were you stationed in August, 1944?

A I was a member of the Onishi Unit and was stationed at Barili.

Q When did you first come to Barili?

A About the eighth of February.

Q 1944?

A Yes.

Q While in Barili, what were your duties as a Japanese soldier?

A I was guarding the streets of Barili.

Q Were you ever a guard at the guardhouse of the garrison?

A Yes.

Q When you were acting as a guard at the guardhouse, were there any Filipino prisoners kept there?

A When I was there, there weren't any.

Q Do you remember whether there were any Filipino prisoners at the end of August or the beginning of September, 1944?

A Around the 10th of September I saw some.

Q Do you know how many prisoners there were?

A The morning when I went out to wash my face I saw five or six women washing their faces.

Q Were you ever assigned by Corporal Hirasaki to go out and arrest or apprehend Filipino civilians and bring them to the garrison in the month of August and September, 1944?

A No, I wasn't ordered.

Q Were you ever ordered to do the same thing by Sergeant Major Sugimoto?

A No, I wasn't ordered.

Q Were you well known in Barili, would you say?

A Yes, I believe I am pretty well known.

Q Did you get to know any of the people of the town?

A Not exactly friends -- and I wouldn't say they were actually friends.

Q Did you know the Del Valle family in Barili?

A I don't know.

Q Did you know a man by the name of Martin Deloraso?

A I don't know.

Q Would you recall a night in the very early part of September, 1944, when a great many Filipino civilians were brought into the garrison?

A I don't know.

Q Do you remember the night that Sergeant Sugimoto came back from the punitive expedition in September?

A Yes, I do know.

Q Do you remember what your duties were on that night?

A I was a guard at night.

Q Where were you guarding?

A At the guardhouse.

Q Do you remember seeing a number of Filipino women in the garrison that night?

A I did not see.

Q When did your unit leave Barili?

A On the 13th of September.

Q Do you recall seeing any Filipino women in the guardhouse just before your unit left Barili?

A Yes, I saw them in the room right behind the guardhouse.

Q Did you kill any of those women?

A I did not kill any of them?

Q Do you know what tuba is?

A Yes, I do know.

Q Do you drink it?

A I don't drink.

LIEUTENANT GORDON: No further questions.

COLONEL HAUSE: Cross-examination by the Prosecution?

CROSS EXAMINATION

BY LIEUTENANT FLEMING:

Q Did you ever go on expeditions with Sugimoto?

A No.

Q Did your duties also confine you to the garrison of the city or town of Barili.

A My mission was to guard the town of Barili.

Q During your stay in Barili, did you ever see any dead bodies on the grounds?

A I did not see.

Q When did Sugimoto's punitive expedition return to Barili?

A On the third of September, 1944.

Q Did you ever see any men being mistreated or hung from the swing in the garrison yard?

A I haven't seen any.

Q Have you ever discovered what happened to the young ladies that you say you saw in the back of the garrison?

A I don't know.

LIEUTENANT FLEMING: No further questions.

COLONEL HAUSE: Any further questions by the Defense?

LIEUTENANT GORDON: No further questions.

EXAMINATION BY THE COMMISSION

BY COLONEL HAUSE:

Q Were these women confined in the storeroom near the kitchen?

A I haven't seen those women.

Q Did you not say that the women were confined in the building back of the guardhouse?

A Yes.

Q Was that building near the kitchen?

A No, the storeroom was right in the back of where we stayed.

COLONEL HAUSE: No further questions. The Witness will be excused.

(Witness excused.)

LIEUTENANT GORDON: The Defense calls as its next witness Yukio Kawano.

YUKIO KAWANO

called as a witness on his own behalf by the Defense, having been first duly sworn, was examined and testified as follows, through an Official Court Interpreter.

DIRECT EXAMINATION

BY LIEUTENANT GORDON:

Q What is your name?

A Yukio Kawano.

Q In August, 1944, what was your rank?

A Superior Private.

Q To what unit were you attached and where were you stationed?

A I was attached to the 1st Company of the Onishi Unit and was stationed at Barili, Cebu.

Q When did you first come to Barili?

A It was in the middle of August, 1944.

Q Do you remember the night that Sergeant Sugimoto returned from a punitive expedition with some of your unit?

A Yes, it was around the 3rd of September.

Q Did you go on that expedition with Sergeant Sugimoto?

A No, I did not.

Q What were your duties on the night that Sergeant Sugimoto's expedition returned to Barili?

A I was a guard.

Q Where were you guarding?

A At the guardhouse.

Q While you were in Barili, what usually were your duties?

A My duties while I was in Barili were to guard the city of Barili.

Q Did you ever go out with Corporal Hirasaki or Sergeant Sugimoto to apprehend and take into custody Filipino civilians while you were in Barili?

A No.

Q On the night that Sergeant Sugimoto returned to Barili were there any Filipino civilians confined in the guard-house?

A No.

Q When did you leave Barili?

A Around the middle of September, 1944.

Q The time that Sugimoto returned from the expedition and the time you left Barili, were you on duty at the guardhouse?

A No, I was on duty and off duty.

Q During those days did you have occasion to be on duty as a guard at the guardhouse?

A Yes.

Q Do you recall whether any Filipino civilians were con-fined there during those days?

A Yes, there were some on the 6th or 7th of September, 1944.

Q What was done with those civilians after the unit left, do you know?

A No, I do not know.

Q Were you well known in the town of Barili?

A I was known to persons near the garrison.

Q Did you know a family by the name of Del Valle?

A No, I do not know them.

Q Did you ever hear that name mentioned around the garrison?

A No, I have not heard.

Q Did you know or meet a man by the name of Martin Deloraso while you were in Barili?

A What kind of a person was he?

Q He was a man, Martin Deloraso.

A I have not heard of that name.

Q Were you ever called upon by non-commissioned officers to kill any Filipino civilians while you were in Barili?

A I did not receive any such orders.

LIEUTENANT GORDON: No further questions, sir.

COLONEL HAUSE: Cross-examination?

CROSS-EXAMINATION

BY LIEUTENANT FLEMING:

Q Did you ever kill any civilians while you were in Barili?

A No.

Q Who arrested these women that you saw in the garrison around the 6th or 7th of September?

A I do not know who arrested them.

Q How old were these women?

A About 17 or 18, I thought.

Q Were these women alive when you left the garrison to return to Carcar?

A I did not see them.

Q Did your group ever have any drinking parties while they were garrisoned in Barili?

A Yes.

Q When were these parties?

A Around the middle of August, 1944.

Q Did you ever have any parties subsequent to the party you had in the middle of August?

A I do not remember of any.

Q Did you ever see anybody hanging from the swings in the garrison yards?

A No, I have not seen any.

LIEUTENANT FLEMING: No further questions.

COLONEL HAUSE: Any further questions?

LIEUTENANT GORDON: No further questions.

COLONEL HAUSE: Any further questions by the Commission?

Appearing there are no further questions, the witness will be excused.

(Witness excused)

COLONEL HAUSE: The Commission will take a ten-minute recess.

(Short recess)

COLONEL HAUSE: The Commission will be in session.

LIEUTENANT BLOODWORTH: The members of the Commission are present, with the exception of Captain Lutz, the Prosecution is present, the Accused with their Counsel are present, and the Prosecution is ready to proceed.

COLONEL HAUSE: You may proceed.

WATARU ABE

called as a witness on his own behalf by the Defense, being first duly sworn, was examined and testified as follows, through Interpreter Morisato:

DIRECT EXAMINATION

BY LIEUTENANT GORDON:

Q What is your name:

A Wataru Abe.

Q In August, 1945, what was your rank?

A I was a Superior Private.

Q What unit were you a member of and where were you stationed in August, 1944?

A I was a member of the Onishi Unit and stationed at Barili.

Q When did you first come to Barili?

A It was in February 1944.

Q Do you remember when Sergeant Sugimoto went out on an expedition in August?

A Yes, I remember.

Q Did you go along on that expedition?

A I did not go.

Q Do you remember the night or the day that the expedition returned to Barili?

A Yes.

Q When did it return to Barili?

A They returned on the 3rd of September, 1944.

Q On that day what were your duties?

A I did not have any duty then that day.

Q What were your usual duties while you were stationed in Barili?

A Guard duties.

Q Where did you guard?

A When do you mean?

Q While you were in Barili where did you usually go on guard?

A I served as guard within the city of Barili.

Q Do you recall whether there were any Filipino civilians in the unit's guardhouse the night that Sergeant Sugimoto returned?

A There were none that day.

Q Did you ever have occasion to go out with Corporal Hirasaki and apprehend Filipino civilians and bring them back to the garrison?

A No.

Q Were you ever ordered by either Corporal Hirasaki or Sergeant Sugimoto to kill the Filipino civilians who were brought in and arrested by the garrison if there ever were any?

A No.

Q Do you remember the date your unit left Barili?

A Yes.

Q When was that?

A It was on the 13th of September, 1944.

Q Do you know whether there were any Filipino civilians in the guardhouse that day?

A I don't remember it very clearly.

Q Do you know the name of the Filipino civilian who worked for the garrison as a cook?

A Yes.

Q What was his name?

A Everyone called him Juan.

Q Do you remember seeing him at the garrison in the latter part of August, 1944?

A He was there always.

Q Do you remember on occasion being on guard at the storehouse and refusing to let him come in?

A I do not know of anything like that.

Q Do you ever remember seeing Filipino civilians hanging from the swing bars in front of the schoolhouse?

A I have not seen.

Q Were you well known to the people of Barili?

A I believe I was well known.

Q Did you ever go to parties or dances with them?

A No.

Q Do you drink intoxicating liquors?

A No.

LIEUTENANT GORDON: No further questions.

COLONEL HAUSE: Any questions by the Prosecution?

CROSS-EXAMINATION

BY LIEUTENANT BLOODWORTH:

Q Were there about 20 men in Sugimoto's garrison?

A Yes.

Q Did all of the men under Sugimoto, including yourself, stay in the same building while you were in Barili?

A Yes.

Q Did you ever talk to any of these men about these Filipina girls that were held during September of 1944?

A I don't know whether they were there or not.

Q Did you say that some Filipina girls were held in the garrison during September 1944?

A No, I did not say that.

Q Do you remember talking to a Lieutenant out at Branch Camp 5 about three weeks ago, an American Lieutenant, about this case?

A Yes.

Q Did you tell him that you saw some prisoners there in the garrison in September 1944, five or six women and children?

A Yes, I did.

Q Weren't you ever curious about why those women and children were held there?

A I have no connection with such things so I did not ask.

Q Did you ever talk to them, to the girls?

A No, I did not.

Q Did you ever see any of the 20 men in that garrison talking to those girls?

A No.

Q Were you in the garrison during the months of August and September, 1944?

A Yes.

Q During September, did the men in your unit throw some drinking parties at night?

A It was not as a group; I believe it was individually.

Q Did you see drinking going on during September in small groups on the garrison grounds?

A Yes.

Q Did you see Sergeant Major Sugimoto drinking in those groups?

A I did not.

Q Did you see Murata drinking?

A I don't remember; I don't drink.

Q Well, you saw the groups, didn't you?

A I didn't watch them especially.

Q Well, who did you see drinking among those 20 men?

A I don't remember their names very well now, but I do remember seeing them drinking.

LIEUTENANT BLOODWORTH: No further questions.

REDIRECT EXAMINATION

BY LIEUTENANT GORDON:

Q That white spot in your hair, did you have that in August, 1944?

A My hair has been this way since I was in Japan.

COLONEL HAUSE: Any questions by the Commission?

There appearing to be none, the witness will be excused.

(Witness excused)

LIEUTENANT GORDON: I would like the Commission's permission to recall Sergeant Sugimoto to the stand for one or two questions.

COLONEL HAUSE: You may recall him.

MASANORI SUGIMOTO

recalled as a witness on his own behalf, having been previously duly sworn, further testified as follows, through Interpreter Morisato:

DIRECT EXAMINATION

BY LIEUTENANT GORDON:

Q Sergeant Sugimoto, was your squad or platoon, when it was stationed in Barili, split up and various men given various duties to perform?

A Yes.

Q Were some of them given duties to act as guards only?

A The men were separated into guards, patrols, and security groups who were to guard positions when enemies were imminent and other than that we received orders from the company as to where to put the guards.

LIEUTENANT GORDON: That is all.

CROSS-EXAMINATION

BY LIEUTENANT BLOODWORTH:

Q Do you drink intoxicating liquor?

A Yes, I do.

Q Did you go on any drinking parties in September, 1944?

A During September, 1944, we did not have any drinking parties within the garrison in Barili.

Q Did you ever call any girls that were held in your garrison up to your room?

A No.

LIEUTENANT BLOODWORTH: No further questions.

EXAMINATION BY THE COMMISSION

Q (By Captain Hendricks) Is it true that during that time your unit made arrests of guerrillas and collaborationists?

A Yes.

Q What disposition was made of these cases?

A Corporal Hirasaki of the Intelligence was sent by me to report on this matter to the Company Commander.

Q What was the final result? Were they released, or what?

A They were executed.

Q By what authority?

A An order was received from the Company Commander.

Q Where were the bodies buried after the execution?

A There was a position dug in front of the guardhouse. I heard from Corporal Hirasaki that the bodies were placed in there.

Q (By Colonel Hause) How were they executed?

A He did not tell me in what method the men were executed.

Q What methods are used by the Japanese Army in executing guerrillas and collaborationists?

A I do not know that.

Q (By Captain Hendricks) How many men participated in the execution that was carried out?

A Five persons.

Q Do you know who those five persons were?

A Yoshio Hirasaki, Tomena Fujiwara, Toshiyuki Kajiwara, Ken Asai, Akira Haruta.

LIEUTENANT GORDON: I believe the witness has misunderstood Captain Hendricks' original question. I think he believes that Captain Hendricks was referring to the seven women who were killed by Corporal Hirasaki just before the unit left. I think Captain Hendricks' question

was about other collaborationists and guerrillas. Is that so?

CAPTAIN HENDRICKS: I meant the general policy.

LIEUTENANT GORDON: But judging from the answer he gave to this question now, he mentions the four men and Corporal Hirasaki who killed the seven women who were in the guardhouse when the unit left on the 13th of September.

CAPTAIN HENDRICKS: On that basis that should be an example of a general policy.

LIEUTENANT GORDON: I don't know whether this witness understands that it is a general policy. I believe he misunderstood the original question. He was asked whether any Filipinos or collaborators were killed and he said "Yes," meaning that this group was killed just before the unit left Barili. Whether any others were killed, I don't think he answered that part of the question.

COLONEL HAUSE: Where are those five that you just mentioned?

A Corporal Hirasaki died in action in the battle of Cebu. Ken Asai died during the punitive expedition in Pangdan. Tomema Fujiwara surrendered and he was hospitalized in Leyte. I heard that he died in a hospital there. Toshiyuki Kajiwara and Akira Haruta,I don't know what became of them;during the time of the American landing we lost contact with each other.

BY COLONEL HAMBY:

Q Were these men that you just named between the third and thirteenth of September at Barili under your command?

A Yes.

FURTHER CROSS-EXAMINATION

BY LIEUTENANT BLOODWORTH:

Q You and Corporal Hirasaki roomed together on the garrison grounds, didn't you?

A Yes.

Q You were in complete charge of that garrison in Barili, were you not?

A Other than Ken Asai and Corporal Hirasaki, intelligence men, I had command of all the rest.

Q In a unit of 20 men, you didn't even have a non-commission intelligence officer, did you?

A Yes, we had intelligence men.

Q When you were in Barili, didn't you personally conduct the investigations of all suspected guerrillas brought to Barili?

A No, I did not.

LIEUTENANT BLOODWORTH: No further questions.

COLONEL HAUSE: Questions by the Defense?

FURTHER DIRECT EXAMINATION

BY LIEUTENANT GORDON:

Q These four men whomyou just mentioned as having been under your command, were they assigned to work with Corporal Hirasaki?

A By whom do you mean?

Q Ken Asai, Fujiwara, Hirasaki, and Haruta.

A Ken Asai was working for Corporal Hirasaki in the selection of intelligence material. As for the other three, an order was received from the company headquarters that we were to leave on the morning of the 13th and to cover the trenches in front of the guardhouse.

LIEUTENANT GORDON: No further questions.

COLONEL HAUSE: Any further questions by the Prosecution?

LIEUTENANT BLOODWORTH: Nothing further.

COLONEL HAUSE: If nothing further, the Witness will be excused.

(Witness excused)

LIEUTENANT GORDON: The Defense rests, your Honor.

COLONEL HAUSE: The Commission will take a ten-minute recess. (Short recess)

COLONEL HAUSE: The Commission is in session.

LIEUTENANT BLOODWORTH: Sir, all members of the Commission are present with the exception of Captain Lutz; the Prosecution is present, the Accused are present together with their Defense Counsel and the Prosecution is ready to proceed.

COLONEL HAUSE: You may proceed.

LIEUTENANT BLOODWORTH: The Prosecution desires to call as a rebuttal Witness, Henry Redula.

HENRY REDULA

called as a Witness by the Prosecution in rebuttal, having first been duly sworn, was examined and testified as follows.

DIRECT EXAMINATION

BY LIEUTENANT BLOODWORTH:

Q State your name.

A Henry Redula.

Q Where do you live.

A At present, I am at the High Commissioner's.

Q How old are you?

A Twenty years old.

Q Are you being held as an alleged collaborator?

A Yes, I am an alleged collaborator.

Q Were you in Barili, Cebu, during the month of August and September of 1944?

A Yes, sir, I was there.

Q What units were you with?

A I was with the Sugimoto Detachment.

Q Did you come to Barili with that unit?

A Yes, sir.

Q About when did you come to Barili, Cebu?

A The first day of August, 1945.

Q Where did you come from?

A Alegria.

Q What were your duties with Sugimoto's Unit?

A He used me as a civilian interpreter.

Q When Sugimoto brought his unit to Barili, did he relieve anybody?

A Yes, sir, he released a sergeant named Masukawa.

Q How many men did Sugimoto bring to Barili with him?

A Eleven or twelve men.

Q What happened to the men under the sergeant that you mentioned that left Barili?

A They stayed there in the garrison.

Q Where did Masukawa go?

A He was released by Sugimoto.

Q Who was the officer in charge?

A Sugimoto.

Q Who was under him?

A Those men whom he took along with him and Masukawa left.

Q Did he have any corporal under him?

A Yes, sir.

Q What were their names?

A Corporal Hirasaki and Corporal Murata.

Q Do you remember when Sugimoto lead a punitive expedition away from Barili?

A Yes, sir, I remember.

Q About what date was that?

A That was around a week after we arrived.

Q Would you say about August 7, 1944?

A A week after would be around that day.

Q Do you remember when Sugimoto returned from this punitive expedition?

A Yes, sir.

Q About when was that?

A The latter part of August.

Q About what date was that?

A It must have been a week before the end of August.

Q During the latter part of August, did Sugimoto call you in to conduct or interpret at an investigation for him?

A Yes, sir.

Q Who were the men that you investigated?

A There were four people who were alleged members of the guerrillas.

Q Do you know those four men?

A I remember them, sir.

Q Name them.

A One we used to call, Toni Roa' and Teodoro Estrada and a certain Filomeno Gonzales, and Aurelio Sasil.

Q Do you remember whether Teodoro Estrada was in that group?

A I just mentioned him, sir.

Q Where were these men investigated?

A They were investigated in the Philippine Constabulary Headquarters.

Q Where was that located?

A It was located around 200 yards from the garrison.

Q In Barili, Cebu?

A Yes, sir.

Q Was Sugimoto present at that investigation?

A Yes, sir.

Q Who conducted that investigation?

A He conducted the investigation, sir.

Q Who interpreted?

A I interpreted, sir.

Q Who else was present; do you see any of the Accused in this room who were present at that investigation?

A Sugimoto was there, sir, and that fellow next to him, Murata, was there.

LIEUTENANT BLOODWORTH: Will you walk over there and point out the men and name them that were there at that investigation. Point out Sugimoto.

(Whereupon the Witness pointed out Sugimoto.)

LIEUTENANT BLOODWORTH: Corporal Murata.

(Whereupon the Witness pointed out Murata.)

Q Did you see anybody else there at that investigation?

A Kawabe. (The Witness pointed to Kawabe.)

Q What happened at that investigation?

A When we entered the constabulary headquarters, at first there was only one man who was being investigated and that was Angelo Yap and then after he was being investigated by Sugimoto and Sugimoto with his men, then this Angelo Yap was made to identify those people that were with him in his arrest and he was made to identify what those names meant there on the papers. During the proceeding of the investigation, there were many who were brought in by Japanese soldiers.

Q During the investigation, did you see these Japanese beat the Filipinos?

A Yes, sir.

Q What did they beat them with?

A They beat them with the butt of the gun and then I saw one also who struck one of those prisoners with a bayonet in the head.

Q Did you see any blood on the Filipinos at that time?

A Yes, sir.

Q Do you know all those men sitting over there? (Pointing to the Accused.)

A Yes, sir.

Q Were they all there during the latter part of August, 1941?

A Every one of them, sir.

Q Will you walk over there and name those men?

(Whereupon the Witness walked over to the Accused.)

A This is Sergeant Major Sugimoto, Corporal Murata, Hisao Kawabe, Wataru Abe, Masashi Masuyama and Yukio Kawano.

LIEUTENANT BLOODWORTH: Let the record show that the Witness pointed out all of the Accused correctly.

Q Do you remember when some Filipino civilians were brought into the garrison in Barili, including women and children?

A Yes, sir, I remember.

Q About when was that?

A That was on the night of September 2.

Q Was Sugimoto in Barili at that time?

A Yes, sir.

Q I will ask you if all of those Japanese that you see sitting over there were present in the garrison at that time?

A All of the Japanese were in the garrison that night, sir.

Q Tell what happened that night as far as you know.

A That day at around 6 o'clock, I went out to visit a friend and then I returned at around 10 o'clock that night and in returning home,on my way home I had to pass straight across the garrison. When I reached the gate, it was Kawabe who halted me, who challenged me, and after knowing it was Henry he let me in and then just

near the gate I heard voices of women and children crying. So I tried to ask him just what was the matter.

Q Just one minute. Is the same Kawabe in the courtroom?

A Yes, sir, the third man over there. (Indicating.)

Q All right; continue with your story.

A And then I asked him what was the matter and he said, "Oh never mind, you go." So I went my way and then a few steps ahead of me I saw Japanese soldiers with fixed bayonets running here and there from place to place, Having been ordered to get out of the garrison, I got out and scarcely was I outside of the campus when I heard a cry of pain and then I paused after that and I wanted to verify whether Sugimoto was inside the garrison so I went to the place where I saw him the last evening and coincidentally I saw him on the way to the garrison. Although we used to call him, "Captain", I said, "What's the noise over there in the Home Economics Building, Captain. Your men are running around with fixed bayonets." And he said, "Oh I do not know about it, but if they are civilians arrested, I will call you later to interpret at the investigation."

Q Did you see Sugimoto go to the garrison?

A Yes, sir.

Q While you were in the garrison, did you hear any voices; any women's voices?

A Yes, I did -- as I told you in the story.

Q Where did you hear those voices coming from; from what building?

A The Home Economics Building beside the garrison, which was the guardhouse, sir.

Q While you were in the garrison, did you see any Japanese drinking?

A Yes, sir, I saw Japanese there; I saw Japanese. There were around four or five drinking just in front of the Home Economics Building and they were singing.

Q Did they appear to be intoxicated?

A I don't know whether they were intoxicated, but they were singing the way the Japanese do when they get drunk.

Q Did Corporal Hirasaki take his orders from Sugimoto?

A Of course, sir, because he was the garrison commander.

Q Was Corporal Hirasaki the intelligence officer of the garrison in Barili?

A There was no intelligence officer because that was a very small detachment and there was no intelligence officer for it.

Q Who conducted the investigations of the civilians when they were investigated, as far as you know?

A The garrison commander, sir.

Q And who was that?

A Sergeant Major Sugimoto.

Q Between September 2 and September 13, did you notice any girls in the garrison?

A Yes, sir.

Q Did you live in the garrison?

A No, sir.

Q Where did you live?

A I was living in the house just across the street from the garrison.

Q And when did you come to the garrison ordinarily?

A Ordinarily, I came in the garrison when I was called by them.

Q Did you ever see any of these girls being taken to the rooms of the Japanese?

A Yes, sir, I even saw them play this game called, "Mah-Jongg" in Japanese.

Q Did you ever see any of the Accused sitting over there take any girls to their rooms?

A Yes, sir.

Q Who did you see?

A For example, I saw this Sergeant Sugimoto play with those girls Mah-Jongg. I saw Murata, and I also saw this Kawabe play with them Mah-Jongg.

Q When did Sugimoto's unit withdraw from Barili?

A They withdrew from Barili, sir, on September 13, 1944.

Q Did you withdraw with the unit?

A Yes, sir, they took me along with them.

Q And where did you go, or where did you withdraw to?

A They were assigned to Pangdan, but we withdrew to Carcar.

Q On the morning of the withdrawal, did you notice anything unusual when you reported into the garrison?

A At first, I noticed nothing unusual sir, because all the installations for some of the defenses and foxholes and trenches were covered, and then when I tried to ask one of the Japanese why all those foxholes were covered,

they said, "It is the usual policy for my military men to destroy military installations upon leaving.

Q Had those foxholes been covered the day before?

A No, sir.

LIEUTENANT BLOODWORTH: No further questions.

CROSS-EXAMINATION

BY LIEUTENANT GORDON:

Q How is it, Henry, that you remember the names of three of these men who were at the investigation and you can't remember the names of the other seven.

A Because I was very sure that Sugimoto took them along with him, those two, that night.

Q What about the other seven, you knew them as well, didn't you?

A They came with Sugimoto, and the rest came--they just got in and out, in and out of the constabulary headquarters.

Q They came in and out while you were there, isn't that so?

A Yes, sir.

Q Did you know who they were?

A There were so many people inside the constabulary headquarters.

Q But you were sure these three were there, aren't you?

A Yes, I am sure.

Q But you are not sure, you can't remember who the others were?

A I can't remember.

Q How often did you go to the garrison while the unit was there?

A When I was called by them.

Q How often were you called?

A Very irregularly.

Q How often is that? Every day? Every other day? Once a week?

A No, very irregularly, sometimes twice a day, sometimes once a day.

Q In the last two weeks of August, how often would you say you were in the garrison?

A I was almost there daily, sir.

Q Do you know the results of the investigation that was held in the Philippine Constabulary?

A No, sir.

Q Weren't the results announced, or told to you?

A No, never, sir.

Q Weren't you curious about finding out what happened?

A It was dangerous to be curious those days.

Q You asked Sugimoto when you met him on the night on the road what was going on in the garrison, did you not consider that dangerous. A No, because the happening he was sure to find out about upon entering, but things like that of investigation would be very dangerous.

Q But you were curious to learn from Sugimoto that night what was happening in the garrison?

A Yes, sir.

Q Weren't you curious to find out what was happening at the investigation at the Philippine Constabulary?

A No, sir, I didn't ask about it from them, I learned the result from the civilians.

Q How long after the investigation did you learn from the civilians?

A Of the results?

Q Yes.

A It was a few days after the investigation, sir.

Q Weren't you curious the next morning to find out what had happened at the investigation the night before?

A No, sir.

Q You are only curious on occasions, aren't you?

A Well, on occasions when it will not be dangerous for me, whenever it will not be dangerous for me.

Q When the unit withdrew from Barili on the 13th of September, you noticed the foxholes in front of the school, is that so?

A Yes, sir.

Q Did you notice whether they contained any bodies?

A No, I did not know about that; I did not notice, sir.

LIEUTENANT GORDON: That is all.

COLONEL HAUSE: Any further questions?

EXAMINATION BY THE COMMISSION

BY COLONEL HAUSE:

Q Does Sugimoto speak English well enough for you to understand him?

A No, he knew little English, sir, but so little that he needed an interpreter to interpret from the Visayan dialect to the Japanese language.

Q What kind of a game did the Japanese play with these women?

A Mah-Jongg.

Q Were the women there against their will or willingly?

A They were prisoners.

Q They couldn't go home if they wanted to?

A Of course not.

RECROSS EXAMINATION

BY LIEUTENANT GORDON:

Q What language did you speak to Sugimoto in?

A I spoke to him in the Japanese language, sir.

COLONEL HAUSE: There being no further questions, the Witness will be excused.

(Witness excused.)

LIEUTENANT BLODDWORTH: Sir, we have one other Witness expected up tonight by plane. I request a recess until morning, and if that Witness does not get here by morning, we will rest and be ready for closing argument.

LIEUTENANT GORDON: I would like to start my closing argument about 10 o'clock tomorrow morning, if that meets with the convenience of the Commission.

LIEUTENANT BLOODWORTH: That will be all right with the Prosecution.

COLONEL HAUSE: The Commission will recess until 1000 tomorrow morning.

(Whereupon the Commission at 1540 hours, 9 April 1946, recessed until 1000, 10 April 1946.)

(206J)

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

UNITED STATES OF AMERICA

-vs-

MASANORI SUGIMCTO
MASAYOSHI MURATA
MASASHI MASUYAMA
YUKIO KAWANO
HISAO KAWABE
WATARU ABE

PUBLIC TRIAL

VOLUME III

Pages 140 to 153, incl.

MANILA, P. I.

DATE: 10 April 1946

COPY NO. 4

CERTIFICATION

THIS CERTIFIES that this Volume is a part of the Proceedings of the Military Commission appointed by Paragraph 17, Extract copy SO No. 80, Headquarters, United States Army Forces, Western Pacific, dated 5 April, 1946, in the trial of the case of the United States of America against MASANORI SUGIMOTO, MASAYOSHI MURATA, MASASHI MASUYAMA, YUKIO KAWANO, HISAO KAWABE, and WATARU ABE.

Dated 13 April 1946.

Francis A Hause

FRANCIS A. HAUSE
Colonel, CAC
President & Law Member of
Commission

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

UNITED STATES OF AMERICA -vs- MASANORI SUGIMOTO MASAYOSHI MURATA MASASHI MASUYAMA YUKIO KAWANO HISAO KAWABE WATARU ABE	PUBLIC TRIAL

Court No. 1
High Commissioner's Residence
Manila, P. I.
10 April 1946

Met, pursuant to adjournment, at 1000 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL FRANCIS A. HAUSE, CAC, President and Law Member
COLONEL WILLIAM R. HAMBY, CAV
LIEUTENANT COLONEL STARLEY N. BOYKIN, JR., INF
CAPTAIN WILLIAM O. LUTZ, INF
CAPTAIN GLENN W. HENDRICKS, FA

APPEARANCES:

FOR THE PROSECUTION:

1st LIEUTENANT RALPH R. BLOODWORTH, INF, Chief Prosecutor
2nd LIEUTENANT JOHN R. FLEMING, ORD, Assistant Prosecutor

FOR THE DEFENSE:

1st LIEUTENANT IVAN H. GORDON, TC, Chief Defense Counsel
2nd LIEUTENANT GAILEY B. UNDERWOOD, TC, Assistant Defense Counsel

OFFICIAL INTERPRETERS FOR THE COMMISSION:

FELOMINA ZOSA
JOSE MA BATUCAN
EUSTAQUIO BAYOT
T/SGT SHIGEO MORISATO
T/SGT ROY KATO
T/4 ISAMI OSATO

OFFICIAL REPORTERS FOR THE COMMISSION:

PHILOTAS A. TSOKAS
S. CORNELIA PEVETO

REPORTED BY:

PHILOTAS A. TSOKAS
S. CORNELIA PEVETO

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P R O C E E D I N G S

The Commission convened, pursuant to adjournment, at 1000 hours at Court No. 1, High Commissioner's Residence, Manila, P. I.

COLONEL HAUSE: The Commission will be in session.

LIEUTENANT FLEMING: Sir, all members of the Commission are present, with the exception of Captain Lutz, the Prosecution staff is present, the Accused are present, together with their Counsel; the Prosecution is ready to proceed.

COLONEL HAUSE: You may proceed.

LIEUTFNANT FLEMING: Sir, the Prosecution rests, and we are ready to present the closing arguments, unless the Defense has something further to add.

COLONFL HAUSE: Has the Defense anything further to offer?

LIEUTFNANT GORDON: No, Your Honor.

COLONEL HAUSE: Are you ready to present your closing argument?

LIEUTFNANT GORDON: I am, sir.

COLONEL HAUSE: Proceed.

LIFUTFNANT GORDON: No great flow of oratory and rhetoric on my part will change one word of the testimony brought forth in this trial and reported in this record.

The Prosecution by its witnesses have attempted to prove that all of the six Defendants were guilty of the acts stated in the Charge and Specifications under which this case was tried. In this regard, in my humble opinion, they have failed.

I know that the Commission will carefully consider the evidence that has been adduced here and upon such consideration must come to the conclusion that the evidence submitted by the Defendants told in complete and truthful detail the story of what happened in Barili in August, 1944, and that these Defendants are NOT GUILTY of the alleged crimes which may have occurred there.

COLONEL HAUSE: Is the Prosecution ready to proceed.

LIEUTENANT FLEMING:

If the Commission please, the facts as presented in this case clearly indicate the wanton disregard of the Defendants for human life and suffering. Men, women and children ranging in age from a four month old infant to people in their late sixties, all fell victims to the ruthless brutality of these criminals. This unit, of which they formed an integral part, moved in and took over the community of Barili, Cebu, on 1 August 1944 and in the short space of ten weeks committed every crime known to mankind. Rape, murder and torture were done on a wholesale basis and in an extremely thorough manner.

Had it not been for the fortuitous escape of one of their intended victims, these so-called soldiers might today be enjoying the privileges of free men.

The Prosecution witnesses have testified to the facts and have established the guilt of these men far beyond any reasonable doubt, as they have all been positively identified and associated with individual crimes. These witnesses, who have appeared before this

Commission have seen atrocities and murders with their own eyes and they have forced themselves to relive experiences they would sooner forget, in order that justice might be done.

It is not the intention of the Prosecution to review all the facts in the case at this point, since we feel that the Commission is most capable of interpolating the presented facts.

One point that should be reviewed, however, is the contention of the Defense that certain of these Defendants were away from Barili at the time of the alleged crimes and are therefore innocent of these deeds. The Prosecution has presented several witnesses who have testified to the contrary and not only have people who were prisoners in the Barili garrison testified to the contrary, but more important -- people who daily worked for these barbarians and who had very good cause to know them intimately have testified that they were in fact participants in these crimes.

Therefore, the Prosecution respectfully recommends that the Commission find each of the six Defendants Guilty and that they each be sentenced to death by hanging.

Sugimoto, because he as the garrison commander is responsible for the death of all these men, women and children taken prisoner during August and September, 1944.

Abe, for his bayonetting to death Justino Paras and Clemencia Del Valle and his wanton abuse of Socorro Del Valle.

Kawano, for the killing of Tomas Del Valle on the night of 2 September 1944 and his part in the beating and eventual death of Martin Deloraso.

Murata, for the beastly rape of Natividad Del Valle Paras and his part in the beating and death of Martin Deloraso.

Masuyama for the killing of Josefa Del Valle and his part in the Martin Deloraso incident and as well the part he played in the beating and torture of Filomeno Gonzales, Teodoro Estrada, Aurelio Sasil and Angelo Yap.

Kawabe, because of his part in the beating and death of Martin Deloraso, whom he beat with a baseball bat.

LIEUTENANT BLOODWORTH: If the Commission please, this case presents a tragic example of a small Japanese unit of twenty men in an isolated garrison that ran wild. There have been other cases in the annals of history but there is none any more horrible than the facts as proven in this case.

The Prosecution dismissed as to six of the original twelve accused in this case. The six that we have tried have been positively identified by Mrs. Paras, Juan Mercado, Mrs. Olandre, and Henry Redula as perpetrators in this case. The Accused have denied these crimes. But their testimony has revealed glaring inconsistencies.

In the first place, the bayoneted bodies were found right after the Japanese left on September 13th, and those bodies were found buried in the spot where Mrs. Paras said that they were killed. The bayoneted bodies were positively identified by Dr. Causin and others. The bodies in the pit, whose killing Mrs. Paras witnessed there, were found to have been bayoneted to death. Her sisters were found in the foxholes right outside of the room where she had witnessed the killings after she had been raped. Sugimoto and these other Accused have tried to use the alibi of being away. Yet they have been identified by seven Prosecution witnesses as present.

I call to the Commission's attention the fact that the Lieutenant, the Japanese Lieutenant who testified for the Defense, admitted that Sugimoto left his punitive expedition in the latter part of August, and that that coincides with the testimony of Sugimoto's personal interpreter, Henry Redula, who says the expedition came back seven days before

the end of August and who witnessed some of the tortures during the latter part of August and also some of the tortures that occurred after September 2nd.

Sugimoto, in his testimony, has tried to lay the blame on Corporal Hirasaki and four other Japanese, strangely enough, all dead. Sugimoto and these Accused are well aware of the fact of the old adage that dead men tell no tales. I have no doubt but that Corporal Hirasaki took part in these atrocities; in fact, he was named as taking part in these atrocities, but each one of these six Accused have been fully identified in the part that they played in them.

All of these Japanese, Sugimoto and the rest of them, the whole twenty of them, stayed in the same building. They lived there, slept in adjoining rooms, ate together, and yet they are wilfully ignorant of what happened there. They admit that some girls were brought there on the school grounds. They never asked anybody about what happened to them. Don't know anything about what happened to them. Strange! Too strange for belief.

Murata denies raping Mrs. Paras. Yet he admits that he slept in room 5 or the room where the trap door was in the floor. That is the same trap door that Mrs. Paras made her escape through to the outside of the garrison. If it hadn't been for this trap door and Murata being in a drunken sleep, Mrs. Paras would not have been alive to tell her story today.

The Prosecution has actually proved only one rape in this case, and that on the part of Murata. The circumstances point to the fact that all of these women were raped.

The night that Mrs. Paras was taken from the storeroom she saw all her sisters taken out and the other young girls the night she was taken out by Murata. However, those young girls were killed and Mrs. Paras is the only one who can give her testimony in this case.

Sugimoto had the power of life and death over the Filipino civilians brought into the garrison. Out of the twenty-four civilians brought there on the night of September 2nd, Mrs. Morales and her three children were the only ones released. Mrs. Morales testified in this case that they were the only ones released, the rest were all killed, with the exception of Mrs. Paras who escaped. Sugimoto could have released any others that he wanted to. I state to this Commission that only a sadist could kill women and children, an eight-month-old baby, and four- and five-year-old children because of alleged guerrilla activities.

I would like to make a brief statement on Kawabe. The witnesses have pointed out Kawabe as the man who was beating Martin Deloraso with a baseball bat and he hung from the swings in the school grounds. Kawabe, when he beat Martin Deloraso, helped kill Martin Deloraso because the next morning his body was removed from the swing by one of the Prosecution witnesses. He helped kill him, he participated in a murder, and he is guilty of murder.

For committing such horrible, inhuman, and brutal atrocities there must be a reckoning in a court of justice.

That is why the Prosecution is asking that each of these six Accused be sentenced to hang.

On behalf of Lieutenant Fleming and myself, I thank the members of the Commission for your kind attention throughout this case.

COLONEL HAUSE: At this time the Commission will recess until 11:15, at which time the findings will be announced.

(Whereupon, at 1030 hours, the Commission recessed until 1115 hours, 10 April 1946.)

Pursuant to adjournment, the Commission reconvened at 1120 hours.

COLONEL HAUSE: The Commission will come to order.

LIEUTENANT BLOODWORTH: Sir, all the members of the Commission are present with the exception of Captain Lutz, the Prosecution staff is present, the Accused are present together with their Counsel.

COLONEL HAUSE: As the names of the Accused are called, the Defense Counsel and the Accused and Interpreter will rise and face the Commission.

Masanori Sugimoto will step before the Commission.

(Whereupon the Accused, Masanori Sugimoto, stepped before the Commission with his Defense Counsel and Chief Interpreter.)

COLONEL BOYKIN: Masanori Sugimoto, this Commission upon secret written ballot, two thirds of the members present at the time the vote was taken concurring in each finding of Guilty, finds you:

Of Specification 3; Guilty

Of Specification 2; Not Guilty

Of Specification 1; Guilty, except for the word, "Beheading".

Of the Charge; Guilty, except for the words "rape and attempt to rape seven Filipino female civilians".

Further, this Commission upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring, sentences you to Death by Hanging.

COLONEL HAUSE: The Interpreter will translate that to the Accused.

(Whereupon Interpreter Osato translated the above to the Accused.)

COLONEL HAUSE: The Military Police will take charge of the Accused.

Masayoshi Murata will step before the Commission.

(Whereupon Masayoshi Murata, the Accused, stepped before the Commission with this Defense Counsel and Chief Interpreter.)

COLONEL HAUSE: Masayoshi Murata, this Commission upon secret written ballot, two thirds of the members present at the time the vote was taken, concurring in each finding of Guilty, finds you:

Of Specification 3; Guilty

Of Specification 2; Guilty, except the words, "seven", "girls and women", "Margarita Aguilar", "Asuncion Del Valle", "Lourdes Del Valle", "Socorro Del Valle", "Rosa Aguilar Gonzales", and "Cristina Roa and divers other persons names unknown", "them", "or attempting to rape them".

Substituting the word "one" for "seven"

The word "girl" for "girls and women"

The word, "her" for "them"

Of the excepted words, "Not Guilty", of the substituted word, "Guilty".

Of Specification 1; Guilty, except for the word, "beheading".

Of the Charge; Guilty, except the words, "and attempt to rape seven" and the word "civilians", substituting therefor the word "one" and the word "civilian",

Of the excepted words, "Not Guilty"

Of the substituted word, "Guilty"

Further, this Commission, upon secret written ballot, two thirds of the members present at the time the vote was taken concurring, sentences you to Death by Hanging.

COLONEL HAUSE: The Interpreter will translate that to the Accused.

(Whereupon Interpreter Osato translated the above to the Accused.)

COLONEL HAUSE: The Military Police will take charge of the Accused.

COLONEL HAUSE: Masayoshi Masuyama, will step before the Commission.

(Whereupon the Accused, Masayoshi Masuyama, stepped before the Commission with the Defense Counsel and Chief Interpreter.)

COLONEL HAMBY: Masayoshi Masuyama, this Commission upon secret written ballot, two thirds of the members present at the time the vote was taken concurring in each finding of Guilty, finds you:

Of Specification 3; Guilty

Of Specification 2; Not Guilty

Of Specification 1; Guilty, except for the word, "beheading".

Of the Charge; Guilty, except for the words, 'rape and attempt to rape seven Filipino female civilians".

Further, this Commission, upon secret written ballot, two thirds of the members present at the time the vote was taken concurring, sentences you to Death by Hanging.

COLONEL HAUSE: The Interpreter will translate that to the Accused.

(Whereupon Interpreter Osato translated the above to the Accused.)

COLONEL HAUSE: The Military Police will take charge of the Accused.

COLONEL HAUSE: Yukio Kawano, step before the Commission.

(Whereupon the Accused, Yukio Kawano, stepped before the Commission with his Defense Counsel and Chief Interpreter.)

CAPTAIN HENDRICKS: Yukio Kawano, this Commission upon secret written ballot, two thirds of the members present at the time the vote was taken concurring in each finding of Guilty finds you

Of Specification 3; Guilty

Of Specification 2; Not Guilty

Of Specification 1; Guilty, except for the word, "beheading."

Of the Charge, Guilty, except the words, "rape and attempt to rape seven Filipino female civilians."

Further, this Commission, upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring, sentences you to Death by Hanging.

COLONEL HAUSE: The Interpreter will translate that to the Accused.

(Whereupon Interpreter Osato translated the above to the Accused.)

COLONEL HAUSE: The Military Police will take charge of the Accused.

Hisao Kawabe will step before the Commission.

(Whereupon the Accused, Hisao Kawabe, stepped before the Commission with his Defense Counsel and Chief Interpreter.)

COLONEL BOYKIN: Hisao Kawabe, this Commission upon secret written ballot, two thirds of the members present at the time the vote was taken concurring in each finding of Guilty, finds you:

Of Specification 3; Guilty

Of Specification 2; Not Guilty

Of Specification 1; Guilty, except fof the word, "beheading".

Of the Charge; Guilty, except for the words, "rape and attempt to rape seven Filipino female civilians".

Further, this Commission upon secret written ballot, two thirds of the members present at the time the vote was taken concurring, sentences you to Death by Hanging.

COLONEL HAUSE: The Interpreter will translate that to the Accused.

(Whereupon Interpreter Osato translated the above to the Accused.)

COLONEL HAUSE: The Military Police will take charge of the Accused.

Wataru Abe will step before the Commission.

(Whereupon the Accused, Wataru Abe, together with his Defense Counsel and Chief Interpreter, stepped before the Commission.)

COLONEL HAMBY: Wataru Abe, this Commission upon secret written ballot, two thirds of the members present at the time the vote was taken concurring in each finding of Guilty finds you:

Of Specification 3; Guilty

Of Specification 2; Not Guilty

Of Specification 1; Guilty, except for the word, "Beheading".

Of the Charge; Guilty, except for the words, "rape and attempt to rape seven Filipino female civilians".

Further, this Commission upon secret written ballot, two thirds of the members present at the time the vote was taken concurring, sentences you to Death by Hanging.

COLONEL HAUSE: The Interpreter will translate that to the Accused.

(Whereupon Interpreter Osato translated the above to the Accused.)

COLONEL HAUSE: The Military Police will take charge of the Accused.

This Commission will stand adjourned until further notice.

(Whereupon at 1135 hours, 10 April 1946, the Commission adjourned until further notice.)

AUTHENTICATION OF RECORD

The foregoing 153 pages, contained in Volumes I to III inclusive (together with Prosecution's Exhibits 1 and 2 which are included in the record) are hereby certified as the Record of the Proceedings of the Military Commission appointed by Paragraph 17, Extract copy SO No. 80, Headquarters United States Army Forces, Western Pacific, dated 5 April, 1946, in the trial of the case of the United States MASANORI SUGIMOTO, MASAYOSHI MURATA, MASASHI MASUYAMA, YUKIO KAWANO, HISAO KAWABE, and WATARU ABE.

Dated 15 April 1946

Francis A Hause

FRANCIS A. HAUSE
Colonel, CAC
President & Law Member of
Commission

THIS ACKNOWLEDGES that the above-described Record was submitted to Defense Counsel prior to being certified by the President of the Commission.

Ivan H Gordon

IVAN H. GORDON,
1st Lieutenant, TC
Defense Counsel

(206J)

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE STAFF JUDGE ADVOCATE

UNITED STATES OF AMERICA)
)
-vs-)
)
MASANORI SUGIMOTO)
MASAYOSHI MURATA) REVIEW
MASASHI MASUYAMA)
YUKIO KAWANO)
HISAO KAWABE)
HATARU ABE)

MANILA, P. I. DATE 1 May 1946

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL
APO 707

7 May 1946

In the foregoing case of the United States vs. Sergeant Major Masanori SUGIMOTO, Corporal Masayoshi MURATA, Leading Private Masashi MASUYAMA, Superior Private Yukio KAWANO, Superior Private Hisao KAWABE and Superior Private Wataru ABE, all of the Imperial Japanese Army Forces, the sentences are approved. Pursuant to paragraph 2, First Indorsement, General Headquarters, United States Army Forces, Pacific, 26 January 1946,to Letter, General Headquarters, Supreme Commander for the Allied Powers, file AG 000.5 (26 Jan 46) LS, Subject: Trial of Seiichi ONISHI et al, 26 January 1946, the execution of the sentence is withheld pending the action of the Supreme Commander for the Allied Powers.

W. D. STYER
Lieutenant General, United States Army
Commanding

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL
APO 707

7 May 1946

In the foregoing case of the United States vs. Sergeant Major Masanori SUGIMOTO, Corporal Masayoshi MURATA, Leading Private Masashi MASUYAMA, Superior Private Yukio KAWANO, Superior Private Hisao KAWABE and Superior Private Wataru ABE, all of the Imperial Japanese Army Forces, the sentences are approved. Pursuant to paragraph 2, First Indorsement, General Headquarters, United States Army Forces, Pacific, 26 January 1946,to Letter, General Headquarters, Supreme Commander for the Allied Powers, file AG 000.5 (26 Jan 46) LS, Subject: Trial of Seiichi ONISHI et al, 26 January 1946, the execution of the sentence is withheld pending the action of the Supreme Commander for the Allied Powers.

W. D. STYER
Lieutenant General, United States Army
Commanding

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE STAFF JUDGE ADVOCATE

APO 707
30 April 1946

UNITED STATES -vs- MASANORI SUGIMOTO MASAYOSHI MURATA MASASHI MASUYAMA YUKIO KAWANO HISAO KAWABE WATARU ABE	Place of Trial:	High Commissioner's Residence, Manila, P.I.
	Arraigned :	8 April 1946
	Tried :	8, 9 and 10 April 1946
	Sentenced :	10 April 1946

CHARGE

The accused, members of the Imperial Japanese Army Forces, did, at the times and place designated, during the time of war between the United States and Japan, wilfully and unlawfully kill twenty-three Filipino civilians, rape and attempt to rape seven Filipina civilians, and beat and torture five Filipino civilians, all in violation of the laws of war (R 12).

SPECIFICATIONS

Each of the following specifications alleges the accused and others, at or near Barili, Cebu, Philippine Islands, on or about 2 September 1944, in violation of the laws of war, did:

Specification 1: wilfully and unlawfully murder Procopio CAUSIN, Maria Noel CAUSIN, Teresa DELA TORRE, Tomas DEL VALLE, Clemencia DEL VALLE, Filomena DEL VALLE, Josefa DEL VALLE, Norma DEL VALLE, Justino PARAS, Demetrio ROA, Manuel ROA, Soledad ROA, Martin DELORASO, Teodore ESTRADA, Filomeno GONZALES, Aurelio SASIL, Angelo YAP, Margarita AGUILAR, Asuncion DEL VALLE, Lourdes DEL VALLE, Socorro DEL VALLE, Rosa Aguilar GONZALES, and Cristina ROA, all unarmed, defenseless, non-combatant Filipino civilians, by bayoneting, beheading and strangling them (R 12-3).

Specification 2: abuse and mistreat seven Filipino girls and women; namely, Natividad del Valle PARAS, Margarita AGUILAR, Asuncion DEL VALLE, Lourdes DEL VALLE, Socorro DEL VALLE, Rosa Aguilar GONZALES, and Cristina ROA, and others, by forcing upon them sexual indignities and by raping or attempting to rape them (R 13).

Specification 3: wilfully, unlawfully and brutally beat, torture and mistreat without cause Martin DELORASO, Teodore ESTRADA, Filomeno GONZALES, Aurelio SASIL, and Angelo YAP, unarmed and non-combatant Filipino civilians, and other persons (R 13-4).

PLEAS

Each of the accused pleaded "Not Guilty" to the Charge and each of the specifications (R 16).

FINDINGS AND SENTENCES

AS TO MURATA:

The Commission upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring, found as to this accused:

Specification 1: Guilty, except for the word "beheading".

Specification 2: Guilty, except the words "seven", "girls and women", "Margarita Aguilar", "Asuncion Del Valle", "Lourdes Del Valle", "Socorro Del Valle", "Rosa Aguilar Gonzales", and "Cristina Roa and divers other person names unknown", "them", "or attempting to rape them". Substituting the word "one" for "seven", "girl" for "girls and women", "her" for "them"; of the excepted words, "Not Guilty", of the substituted words "Guilty".

Specification 3: Guilty

Of the Charge: GUILTY, except the words, "and attempt to rape seven" and the word "civilians", substituting therefor the word "one" and the word "civilian". Of the excepted words, "Not Guilty"; of the substituted words, "Guilty".

AS TO SUGIMOTO, MASUYAMA, KAWANO, KAWABE AND ABE:

The Commission upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring, found as to these accused:

Specification 1: GUILTY, except for the word "beheading".

Specification 2: NOT GUILTY

Specification 3: GUILTY

Of the Charge: GUILTY, except for the words "rape and attempt to rape seven Filipino female civilians".

Each of the accused was sentenced to death by hanging.

I. ARRAIGNMENT.

A. At the time of arraignment, the Commission, pursuant to duly published and authenticated orders (R 2-6, Pros. Ex. No. 1) was composed of Col. Francis A. Hause, President and Law Member, Col. William R. Hamby, Lt. Col. Starley N. Boykin, and Capt. Glenn W. Hendricks. Capt. William O Lutz, prior to the convening of the Commission but subsequent to the publication of orders appointing the Commission, had been placed on orders returning him to the United States.

B. The prosecution was conducted by Lieutenants Ralph R. Bloodworth and John R. Fleming (R 6), while the accused were, by their choice, represented by Lieutenants Ivan H. Gordon and Gailey B. Underwood (R 9-11).

C. The Commission, interpreters and reporters were duly sworn (R 7). The swearing of the prosecutors was not accomplished, but in view of the fact the Regulations governing these trials do not require they be sworn this does not constitute reversible error.

D. The rights of the accused, as set forth in paragraph 5b, letter, AG 000.5 (5 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 5 December 1945, subject: Regulations Governing the Trials of Accused War Criminals, were read to the accused by the President of the Commission (R 8), translation thereof

into Japanese being waived by defense counsel, the accused having had these rights previously explained to them (R 9).

E. The commission found a certified copy of the Charge and Specifications, together with a true and complete translation thereof, was served upon the accused 21 March 1946 (R 9).

F. Following the reading of the Charge and Specification, the prosecution moved for the dismissal, without prejudice, as to Seiichi Onishi, Norikumi Yamasaki, Yoshinori Uehara, Tatsuma Tagama, Takami Ono and Kazumi Nojima because they had not been identified as perpetrators of the atrocities alleged in this matter (R 15). The motion was granted.

G. The commission heard the plea of each of the accused to the Charge and Specifications. Each pleaded "Not Guilty" (R 16).

II. TRIAL.

A. Formal Matters.

1. Each witness was duly sworn before testifying.

B. Prosecution Evidence.

Natividad del Valle PARAS lived in Barili, Cebu, where, on 2 September 1944, she was arrested by the Japanese and taken to the school which they used for a garrison (R 21). Abe, one of the accused was present and abused her sister, Socorro (R 22). Her father and mother, six sisters, niece and husband were taken to the school (R 22-3). She has seen none of them since 3 September 1944, none of them was a guerrilla and none had a trial (R 23). At the garrison she saw Mrs. Mercedes Roa and four of her children, Procopio Causin and Mrs. Maria Noel Causin (R 23). The last named two, her husband, her father and herself were taken out to a pit the night they were arrested and all but her were bayoneted (R 23). She identified Kawano as having bayoneted her father and Abe as having bayoneted her husband, Justino Paras (R 24). She saw her mother taken out to the pit but did not

see her bayoneted (R 25). The night of 3 September 1944 she was taken to room 5 and raped by Murata, whom she identified. She later escaped through a trap door (R 25-6). While in this room she looked out the window and saw, some 15 to 20 feet away, her sisters Josefa, Clemencia and Filomena bayoneted by Abe, Hirasaki and Masuyama (R27). She identified the latter in the courtroom (R 28). She saw Sugimoto at the garrison the night of 2 and 3 September (R 29) and identified him in court (R 30). On cross-examination she said Sugimoto had been there almost a month when these events occurred (R 31), although he was absent for a few days in August (R 33).

Helen Causin MORALES was arrested 2 September 1944 at Barili, Cebu, by Japanese (R 37). At the garrison she saw her father and mother, Procopio and Maria Causin, her sister, Mercedes Roa, and her children, Maria Christina, Soledad, Demetrio and Manuel (R 38). She has never seen any of these persons since that date (R 38,40). She heard women screaming (R 38) before she was questioned by Sugimoto (R 39,42) and released (R 39). None of the Causin family was a guerrilla (R 39). She saw the Del Valle family taken to pit near latrine (R 40). She recognized the bodies of her father, mother and Tomas Del Valle at the pit by school latrine (R 41). Japanese soldiers were drunk at garrison (R 42). Arrested persons may have been investigated, but not to her knowledge (R 43-4). Witness identified Masuyama as having arrested her father and Sugimoto as being known by her (R 44-5).

Hospicio AGUILAR lived in Barili, Cebu (R 45). His son-in-law, Filomeno Gonzales, was arrested 8 August 1944 and his daughters, Rosa and Margarita, were arrested 2 September 1944. He saw the girls' bodies at the Japanese garrison (R 46). Bayonet wounds showed on their bodies (R 47). According to information he had the girls were killed 12 September 1944. He identified Sugimoto and Masuyama, after

some confusion, and said he had seen all the accused in Barili (R 48).

Dr. Teodosio CAUSIN, physician of Barili, found the bodies of Rosa and Margarita Aguilar in front of the Central School Building. Later he dug up Soledad and Christina Roa and one he could not identify (R 50). The Aguilar girls' bodies bore bayonet wounds (R 51). Found two Del Valle girls, Manuel and Demetrio Roa (R 51), Procopio and Maria Noel Causin and Justino Paras (R 52). The latter's body was about 20 yards from the pit by the latrine and bore a bayonet wound (R 53). The witness identified Masuyama, Abe, Kawano and Sugimoto. The first two were in Barili from June and the latter from August to late September, 1944 (R 54-5).

Juan MERCADO, a resident of Barili, Cebu (R 56), worked in Japanese garrison as assistant cook (R 57). Saw Martin Deloraso mistreated by Masuyama, Kawabe, Kawano and Sugimoto (R 58). Saw Kawabe strike Deloraso with a bat and Masuyama beat him with a piece of wood. Kawano and Sugimoto also struck him, the beating going on from morning to late afternoon (R 59). Witness took the body down the next morning as ordered by Japanese (R 60). When witness came to work 3 September 1944 he was refused admittance by Abe (R 62) to get utensils because, he was told, there were girls in the room (R 60-1). He saw dead bodies of girls 13 September 1944 when Japs withdrew (R 62-3). Witness stated Sugimoto remained in Barili from date of arrival in August until the garrison left in September (R 65).

Heremenegilda OLANDRE, who lived in Barili during August and September, 1944 (R 66), worked in the Daido, a Japanese firm (R 67). In her work she visited the garrison and there, during latter part of August, saw Filomeno Gonzales, Teodoro Estrada, Angelo Yap and Aurelio Sasil being mistreated by being hung on the bars of the swing (R 67-8). While so hung these ones were hit by Japanese with pieces of wood, pistols or the hands (R 69). She identified Sugimoto and Masuyama as participants (R 70).

Captain Frank S. JOHNSON identified statement taken from Sugimoto 8 December 1945 and signed by him 10 December 1945 (R 71). Statement was introduced as Prosecution's Exhibit No. 2 (R 72).

In this statement Sugimoto said he was in Barili August to 3 September 1944 (R 73). Lt. Higashi sent orders to kill women and children under arrest at the school (R 74-5). He had Corporal Hirasaki carry out the orders (R 74-5). The corporal and those helping him are all dead (R 76-7).

C. Defense Evidence.

MASANORI SUGIMOTO, a Sergeant Major in the Japanese Army, who was in charge of a unit in Barili from 18 August to 13 September 1944, left Barili 20 August and did not return until 8 or 9 P.M. (R 85) 3 September 1944. Murata and Kawabe, two of the accused, were with him (R 83). Corporal Hirasaki was in charge of the garrison in his absence (R 84). He received no report from Corporal Hirasaki about any activity in Barili during his absence (R 86). Says his statement introduced by prosecution is true (R 86-7). On cross-examination witness knew none of the alleged mistreated persons (R 88). Witness did not see any girls at garrison when he returned from expedition and did not remember talking to Henry Redula, an interpreter, or Mrs. Morales on 2 September 1944 (R 90,92). About seven people were picked up 7 or 8 September but witness did not investigate them (R 91).

Sugimoto was recalled to the witness stand (R 122) and stated he did drink intoxicating liquor but there were no parties in September 1944 in the garrison and he had no girls in his room (R 122). He related some guerrillas were executed by Hirasaki and five others, all now dead or missing (R 123-5). These men, except Hirasaki, were under his command (R 125). He did not conduct investigations (R 125-6).

MASAYOSHI MURATA, a Corporal in the Japanese Army (R 93), said he was on punitive expedition as Sugimoto testified (R 94).

When unit left 13 September 1944 he saw six or seven Filipinos at the garrison (R 95) and asked Corporal Hirasaki about them because the corporal was in charge of intelligence. On cross-examination he did not remember the number of the room where he stayed but it did have a trap door (R 97). He saw no girls 3 September but did on 5 or 6 September 1944 (R 97). He does not drink and didn't see any parties going on (R 98).

HISAO KAWABE repeated testimony about punitive expedition (R 99-100). Never saw anyone hanging from playground bars (R 100) and had no baseball equipment (R 101). Saw no Filipino civilians in any of the rooms of building 3 September 1944 (R 101-2). On cross-examination did not recall Henry Redula talking to him the night of 2 September 1944 because he was not on guard that night (R 103). Witness said he had seen trap door in room where Murata, Hirasaki and Sugimoto slept (R 104).

LT. KAWAHARA stated Sugimoto went on punitive expedition which left mid-August and returned "About the end of August" (R 106). After resting about two days following first expedition, witness went on another but Sergeant Sugimoto did not go (R 107).

MASASHI MASUYAMA was in Barili from early February, 1944 until mid-September 1944 where he was a street guard (R 108-9). He did not arrest any persons but saw five or six women in garrison around 10 September (R 109). He did not kill any of the women and doesn't drink (R 110). He never saw any dead bodies, or any persons being mistreated (R 111).

YUKIO KAWANO was a guard at guardhouse when Sugimoto's expedition returned around 3 September (R 113). Some Filipinos were in guardhouse around 6 or 7 September but he doesn't know what became of them (R 114,115). Witness never killed any civilians in Barili (R 115). He does not remember any drinking parties after

August, 1944 (R 116).

WATARU ABE came to Barili in February, 1944 (R 117). The Sugimoto expedition returned 3 September 1944 at which time there were no Filipino civilians in the guardhouse (R 118). He was never ordered to kill any civilians by either Sugimoto or Hirasaki (R 118). He did not remember: (1) any civilians being in the guardhouse 13 September 1944 when the unit left Barili; (2) refusing any Filipino cook admission to a storehouse; (3) any Filipino civilians hanging from swing bars (R 119). He did not go to any parties with people of Barili and does not drink intoxicating liquors (R 119). On cross-examination he remembered some women and children being in garrison in September 1944 but he never talked to them and didn't know why they were there (R 120). There was some individual drinking going on during September but he does not recall who did it except he did not see Sugimoto participating (R 120-1).

D. Prosecution Rebuttal Evidence.

HENRY REDULA, held as an alleged collaborator, was with the Sugimoto Detachment in Barili during August and September, 1944 (R 127), as an interpreter (R 128). Sugimoto was in charge, with Corporals Hirasaki and Murata under him (R 128). He recalled the punitive expedition under Sugimoto left about 7 August 1944 and returned the latter part of August (R 128-9). During the latter part of August, Sugimoto investigated Toni Roa, Teodoro Estrada, Filomeno Gonzales and Aurelio Sasil at the Philippine Constabulary Headquarters in Barili, the witness acting as interpreter (R 129-130). Murata and Kawabe were at this investigation (R 130-1). Angelo Yap was investigated, too, and those investigated were struck with the butt of a gun and a bayonet (R 131). The witness identified each of the accused and stated they were at garrison during latter part of August (R 132). All of the accused were in the garrison the night of 2 September 1944 (R 132). Witness was halted by Kawabe (R 132) who told him not to mind about activity in garrison where soldiers were running about

with fixed bayonets (R 133). He talked to Sugimoto who said he would call him if civilians were to be interrogated (R 133). The witness saw Japanese drinking and singing as they do when intoxicated (R 134). He stated investigations were conducted by Sugimoto (R 134). He saw girls in the garrison (R 134) and knew Sugimoto, Murata and Kawabe played Mah-jongg with the girls (R 135). When the garrison withdrew 13 September 1944 he inquired why the foxholes were covered and was told it was military policy (R 135-6). The witness was in the garrison one or two times daily the latter part of August (R 137). The girls referred to were not free to leave the garrison (R 139).

III. OPINION.

A. As to Jurisdiction.

1. Pursuant to the 1st Ind, AG 000.5 (26 Jan 46) LS, General Headquarters, United States Army Forces, Pacific, 26 January 1946, to basic Letter AG 000.5 (26 Jan 46) LS, General Headquarters, Supreme Commander for the Allied Powers, 26 January 1946, Subject: Trial of Seiichi ONISHI et al, and acting within the authority vested in him, the Commanding General, United States Army Forces, Western Pacific, did, by paragraph 17, Special Orders No. 80, Headquarters, United States Army Forces, Western Pacific, 5 April 1946, properly establish the commission trying this matter.

2. The Commission had jurisdiction over the territory wherein it sat, over the persons brought before it for trial and over the offenses with which they were charged. Letter, AG 000.5 (5 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, 5 December 1945, Subject: Regulations Governing the Trials of Accused War Criminals.

B. As to Procedure.

1. The members of the Commission sitting in this matter were qualified so to do and they, the interpreters and reporters

were duly sworn. The Prosecution was not sworn but in view of the fact the Regulations do not require the Prosecution be sworn and in the absence of an objection on the part of the Defense this oversight is not held to be reversible error.

2. The rights of the accused were read to them in open court by the President of the Commission. Translation thereof was waived upon the statement of counsel for the accused that their rights had previously been fully explained to them. A certified copy of the Charge and Specifications, with a true and complete translation thereof in the Japanese language were furnished each of the accused and all testimony at the trial was translated into Japanese.

3. The trial procedure established by the Rules and Regulations governing these trials was complied with in all respects.

4. The findings and sentences were returned with the requisite two-thirds vote in the affirmative by the members of the Commission constituting a quorum.

C. As to Evidence.

In this matter six men stood trial for the murder of twenty-three Filipino civilians, the rape of seven Filipinas and the maltreatment of five Filipinos.

The Commission found each of them guilty of the killing of the twenty-three and the maltreatment of the five. One of the accused was found guilty of the rape of a woman who appeared as a witness.

As is customary in these cases, the accused sought to establish their absence from the scene of the crimes and the accomplishment of the crimes by some brothers-in-arms who are now dead or missing. These are time-tested alibis and always arouse a suspicion of fabrication in these cases.

Each of the accused, save Abe, was shown by eye-witnesses testimony to have maltreated at different times and places various Filipino civilians. One such Filipino was Martin Deloraso. The accused had caused him to be tied up to the school bars, arms swung to the rear, in such manner his feet barely touched the ground. He was so tied a whole day. During the day the accused beat and struck him with a bat, pieces of wood and small arms until he died. A witness for the prosecution removed his body from the bars. Other testimony received at the trial showed similar treatment meted out to other Filipinos none of whom have been seen since they were taken to the garrison.

Direct testimony shows Abe guilty of bayoneting at least two persons, causing their deaths. Kawano and Masuyama likewise were seen bayoneting persons. Each of the accused was placed at the scene of the crime alleged in Specification 1 by eye-witnesses who knew them well enough to identify them positively. Fifteen of the persons alleged killed were women and children. Two others were elderly men. There was no evidence anyone of the deceased was a guerrilla or assisted guerrillas. Nor was any proof given showing such circumstances to exist as to merit a belief they were assisting guerrillas or that attacks upon the garrison were so imminent as to necessitate the taking of these lives. Quite the contrary may be deduced from the evidence presented. Clearly, there is sufficient cause for believing these persons' lives were taken in violation of the laws of war.

The garrison at Barili was under command of Sergeant Major Sugimoto, and, though he denies it, prosecution witness Redula stated he conducted the investigations for the garrison. In this capacity he knew how many persons were brought in for questioning and what happened to them. Sugimoto, in the statement taken from him, said only seven or eight persons, women and children, were

arrested while he was in Barili. These ones, he said, were killed on orders from company headquarters. The remaining persons, men, women and children whose names are part of this record and whose bodies were found on the school grounds, were killed then upon his order and became his responsibility. As the garrison commander he had the power of life or death over the persons brought there. It is evident the course he pursued. He must be made to pay for his crime.

While the Commission is not justified in finding each of the accused guilty of killing the twenty-three persons named in Specification 1, yet the evidence amply demonstrates each of the accused actively participated in the death of one or more of the deceased and each of the accused was present at the scene of the crimes. The sentences announced by the Commission are proper.

IV. CLEMENCY.

No application for clemency has been presented by counsel for the accused and none is recommended.

V. RECOMMENDATION.

It is recommended the sentences herein be approved and the record of trial be forwarded to the Commander-in-Chief, United States Army Forces, Pacific, for action under paragraph 2, 1st Ind, General Headquarters, United States Army Forces, Pacific, 26 January 1946, to Letter, General Headquarters, Supreme Commander for the Allied Powers, file AG 000.5 (26 Jan 46) LS, Subject: Trial of Seiichi Onishi et al, 26 January 1946.

The form of action designed to effect the foregoing recommendation is attached.

HOWARD C. GRAHAM
1st Lt., TC
Asst. Staff Judge Advocate

I CONCUR:

ASHTON M. HAYNES
Colonel, JAGD
Staff Judge Advocate

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

GHQ, SCAP, LEGAL SECTION, MANILA BRANCH
(Reporting Office)

2075

File Number P-51 Date of Report 3 January 1947

Title of Case U. S. A. vs. Tetsuo NAITO

PART A

1. Names and Nationalities of Accused:

Tetsuo NAITO - Japanese

2. Nature, Place and Date of Offense:

Murder, cruelty and torture of Filipino civilians at or near Biao, Guianga District, Mindanao, Philippine Islands, on or about 5 May 1945.

3. Names and Nationalities of Victims:

Amador Concepcion - Filipino
Beatriz Lianga Torres - Filipino
Aurora Torres - Filipino
Virginia Torres - Filipino
Eugenio Torres - Filipino

4. Probable Place and Date of Trial:

High Commissioner's Residence, Manila, Philippine Islands, 15 March 1946.

PART B

5. Place and Date of Trial:

High Commissioner's Residence, Manila, Philippine Islands.

Arraignment - 15 March 1946.

Trial - 15 March 1946.

(Over)

WD AGO Form R-5392
21 June 1946

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 Jun 46) WDSCA) 21 June 1946.

Def # 9

6. Judgment and Sentence (Relate to Specific Accused)

Tetsuo NAITO - 28 March 1946, Guilty, death by hanging.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

Tetsuo NAITO - 17 April 1946, sentence approved, execution withheld by Lieutenant General W. D. Styer, C. G., AFWESPAC, pending action of Confirming Authority.

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8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

Tetsuo NAITO - 8 May 1946, sentence confirmed and ordered executed by General of the Army, Douglas MacArthur, SCAP, under the supervision of, and at the time and place to be designated by the C. G., AFWESPAC.

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9. Date and Place of Execution of Sentence:

6 June 1946, Laguna Province, Philippine Islands.

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDGS, The Pentagon, Washington 25, D. D.

25-89621-300

U.S. 207

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE STAFF JUDGE ADVOCATE
APO 707

UNITED STATES OF AMERICA
-vs-
TETSUO NAITO

REVIEW

MANILA, P. I. DATE 16 April 1946

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL
APO 707

17 April 1946

In the foregoing case of the United States vs. Tetsuo Naito, a Japanese civilian, the sentence is approved. Pursuant to paragraph 2, First Indorsement General Headquarters, United States Army Forces, Pacific, 12 February 1946, to Letter, General Headquarters, Supreme Commander for the Allied Powers, file AG 000.5 (12 Feb 46) LS, Subject: Trial of Tetsuo Naito, 12 February 1946, the execution of the sentence is withheld pending the action of the Supreme Commander for the Allied Powers.

W. D. STYER
Lieutenant General, United States Army
Commanding

HEADQUARTERS AMH/HCG/jvd
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE STAFF JUDGE ADVOCATE

APO 707
12 April 1946

UNITED STATES	Place of Trial	High Commissioner's Residence, Manila, P. I.
-vs-	Arraigned	15 March 1946
TETSUO NAITO	Tried	15 and 28 March 1946
	Sentenced	28 March 1946

CHARGE

That Tetsuo NAITO, a Japanese civilian, acting together and in concert with members of the Imperial Japanese Armed Forces, did, at the time and place hereinafter set forth, and during a time of war between the United States and Japan, wilfully and unlawfully kill four Filipino civilians and attempt to kill one Filipino civilian in violation of the Laws of war (R 15).

SPECIFICATIONS

That accused, a Japanese civilian, then President of the Japanese Neighborhood Association of Biao, Guianga District, Mindanao, Philippine Islands, and other persons whose names are unknown, connected and acting with Japan, did, at or near Biao, on or about 5 May 1945, during a time of war with the United States, wilfully and unlawfully, in violation of the laws of war:

1. (As amended R 18-9) kill Amador CONCEPSION, Beatriz LIANGA TORRES, Aurora TORRES and Eugenio TORRES, unarmed and non-combatant Filipino civilians, by striking them with a sword, bayoneting them and shooting them;

2. Attempt to kill Virginia TORRES, an unarmed and non-combatant Filipino civilian, by stabbing her several times with a bayonet (r 15-6).

PLEA

The accused pleaded "Not Guilty" to the Charge and Specifications both in their original form (R 18) and in their amended form (R 20-1).

FINDINGS AND SENTENCE

Of Specification 1 (as amended): GUILTY, except the words, "wilfully and unlawfully kill Amador Concepcion, Beatriz Lianga Torres, Aurora Torres, and Eugenio Torres", substituting therefor the words "wilfully and unlawfully kill Aurora Torres and willfully and unlawfully attempt to kill A mador Concepcion, Beatriz Lianga Torres and Eugenio Torres", of the excepted words "Not Guilty", of the substituted words "Guilty".

Of Specification 2: GUILTY

Of the Charge: GUILTY, except the words, "wilfully and unlawfully kill four Filipino civilians and wilfully and unlawfully attempt to kill one Filipino civilian" substituting therefor the words, "Wilfully and unlawfully kill one Filipino civilian and wilfully and unlawfully attempt to kill four Filipino civilians", of the excepted words, "Not Guilty", of the substituted words, "Guilty".

The accused was sentences to hang by the neck until dead (R 168).

I. ARRAIGNMENT.

A. At the time of arraignment the Commission, pursuant to duly published and authenticated orders((R 2-12), was composed of Lt. Col. John A. Chase, President and Law Member, Lt. Col. John L. Hitchings, Maj. Harold E. Warren, and Capt. Jack Ellingson.

B. The prosecution was conducted by Capt. Samuel Rowe, and the defense by Lts. Clarence L. Waters and John E. McCullough.

C. The reporter, interpreters, Commission and Prosecution were sworn (R 14).

D. The prosecution stated a certified copy of the Charges and Specifications together with a true and complete translation thereof were served on the Accused 14 March 1946, in Manila, P. I. (R 14-5).

E. The rights of the Accused as set forth in par. 5 (b) of the Regulations governing these trials (R 5) were read and explained to the accused (R 17).

F. The prosecution and defense, with the permission of the Commission, stipulated that Specification 1 be brought into agreement with the Charge by the insertion of the name of the fourth person alleged to have been killed by the accused (R 18-9). The Specification as amended was read to the Accused by an interpreter and, as he did to the Charge and Specifications prior to amendment, the Accused pleaded "Not Guilty".

II. TRIAL.

A. Formal Matters.

1. Each witness was duly sworn before testifying.

2. William E. Rice was sworn in as official reporter (R 80).

3. Special Order No. 61, par. 51, this headquarters, 14 March 1946, introduced into record, appoints Lt. Col. Chase as President and Law Member of this commission (R 80).

4. Three additional interpreters were sworn (R 94).

B. Prosecution Evidence.

VIRGINIA TORRES, whom the accused is alleged to have attempted to kill, told how the accused, whom she identified in court (R 22), came to their home with two Kempei Tai some time in February,,1945, (R 22) searched the house and told them to dress and come to Kempei Tai Headquarters (R 22-3). The witness was asked why there were so many parties at their house and on denial was sent out and they went home (R 24-5). The next time

she saw accused was 1500 hours, Saturday, 5 May 1945, when he came with two soldiers to their house (R 25). He ordered her mother tied and taken away. Later she and her sister were being taken from the house when her brother, Eugenio, came along and accused sent the soldiers for more rope to tie him and another boy up (R 26). She and her sister were taken upstairs by the soldiers and Naito went out with the boys (R 28). They heard two shots and Naito came back to the house (R 28). Shortly, the sister, Aurora, was tied and all proceeded down stairs (R 29-30). She saw her sister kick the Japanese soldier and saw him stick her in the back with a bayonet (R 30-39). The witness was taken into the bushes by the soldier guarding her and thinking he was about to dishonor her she tried to get his bayonet but he used it to stab her and left her for dead (R 31-3). The next time she heard about her mother was from Susimo Companiado in Leyte 7 July the same year, who said he saw her killed by Naito (R 33-4). Witness identifies accused as president of Japanese Association and as such had a great deal to say in the community, controlled Japanese soldiers, and dressed in navy blue, wearing a Japanese cap (R 36). Witness said she heard Naito say "Kill them", meaning her sister and herself (R 36-39). Witness exhibited to Commission scars received from bayoneting (R 37). Witness says she understands some Japanese phrases (R 37-8). She establishes BEATRIZ TORRES as her mother, AURORA TORRES as her sister and EUGENIO TORRES as her brother (R 38). The witness said she had never seen her mother or sister after this date (R 39) but she talked to one who had seen her mother's and brother's bodies (R 40). When Naito talked to her mother and sister he used Davao Spanish but spoke to the soldiers in Japanese (R 40). After some discussion the Commission permitted the defense to have the accused say in Japanese "kill them", "get the rope" and release them". The witness understood none of them. Witness says he spoke Nippongo (R 55). She understands some Davao Spanish (R 55).

SUSIMO COMPANIADO testified he was gathering bananas at 3 o'Clock, Saturday, 5 May 1945, when he saw the accused whom he identified (R 57), cut Mrs. Torres neck and stab her with his sword and shoot Eugenio and Amador (R 58-60). This took place in a bushy territory so he could see without being seen (R 62-3). The Torss house was between Maito's house and the place of execution (R 64). Mrs. Torres was executed first, then Eugenio and finally Amador (R 66), about half an hour elapsing between each execution (R 67). The witness never went to the bodies but knows they are dead because they fell and he never say them again (R 68). Witness does not know how they were buried (R 71).

The first witness, Virginia Torres, was recalled but could only testify she never saw her mother, sister or brother though if they were alive they had every reason to try to find her (R 72-3).

At this point the Commission recessed the hearing to allow prosecution to find evidence of what happened to the bodies.

The prosecution, at the reopening of the trial thirteen days after the above-mentioned recess, introduced a certificate of a physician who examined wounds on Virginia Torres and concluded they had been caused by a bayonet (R 82).

Vicente Hizon Paulilio was put on the stand to identify a statement made by Dr. Quiambao, which statement was admitted in evidence over the objection of the defense. This statement (R 88-9) established that a skeleton examined by the doctor, who was qualified so to determine, was that of a female. And further, because the doctor had been acquainted with Aurora Torres during her lifetime, he identified the skeleton as that of Aurora Torres from the malformation of the teeth and the absence of one particular molar.

Virginia Torres, brought back to the stand, told how on 20 March 1946 she had gone with Capt. Howe, the prosecutor, Alfonso Torres, her brother, Mrs. Garcia, her auntie, and Susimo Companiado to look for the graves of those alleged in the trial to be dead (R 94). They did not find any grave other than that of her sister, Aurora (R 95). She said her sister was wearing a brown, pleated dress with snaps when last she was seen alive (R 95). From the grave alleged to be that of her sister she identified a piece of cloth as coming from the dress of her sister (R 96). The skeleton was further identified as that of her sister by the absence of a molar from and a crooked tooth in the skull (R 97-8). The skeleton was placed in a box by her brother, Alfonso, and taken to Dr. Quiambao's clinic (R 99).

Alfonso Torres, on 20 March 1946, accompanied the party looking for graves of the deceased and disinterred his sister's skeleton (R 103), placing it in a box (R 104). He also identified the skull as that of his sister by the crooked tooth and the absence of a molar (R 105,108-10). A piece of dress goods, brown in color and with pleats removed from the grave (R 106-7). The skeleton was taken to Dr. Quiambao (R 107).

Evangelina A. Q uiambao, wife of Dr. Nector S Quiambao, was sworn as a witness and identified the accused (R 111-2). She knew the Torres family (R 112) and more particularly Aurora for she had worked for the doctor (R 114). She described Aurora as a taller than average Filipina (R 112) with beautiful teeth save for the one crooked (R 113), which she identified as being in the skull of the skeleton brought to her husband's clinic (R 115). She identified the statement taken by the prosecution 22 March 1946 from her husband (R 118-9). She stated, over the objection of the defense, that her husband said he could not come to the trial because three of his patients were between life and death (R 118).

C. Defense Evidence.

No evidence was introduced by the defense.

III. OPINION.

A. As to Jurisdiction.

Pursuant to the 1st Ind., AG 000.5 (12 Feb 46) LS, General Headquarters, United States Army Forces, Pacific, 12 February 1946, to Letter AG 000.5 (12 Feb 46) LS, General Headquarters, Supreme Commander for the Allied Powers, 12 February 1946, Subject: Trial of Tetsuo Naito, and acting within the authority vested in him, the Commanding General, United States Army Forces, Western Pacific, did, by paragraph 3, Special Orders No. 60, Headquarters, United States Army Forces, Western Pacific, 13 March 1946, properly establish the Commission trying this matter.

The Commission had jurisdiction over the territory wherein it sat and over the offense with which the accused stood charged. A question, however, was raised by the defense whether the Commission had jurisdiction over the accused. Defense counsel gave the following six reasons why the charge against the accused should be dismissed:

1. The Supreme Commander for the Allied Powers has no authority from said Powers to appoint this Commission to try a Japanese civilian not accompanying or acting with the army.

2. No martial law, military government or hostilities existed at the time of appointment of the Commission.

3. The regulations governing these trials deny the accused a fair hearing.

4. Assuming authority to appoint this Commission exists in the Supreme Commander he has no right to delegate this authority to the Commander-in-Chief of AFPAC, who in turn has no right to redelegate it to the Commanding General of AFWESPAC.

5. No prior notice was given to the protecting power of Japan in accordance with the provisions of the Geneva Convention of 27 July 1929.

6. The prosecution failed to prove beyond a reasonable doubt the guilt of the accused.

Reasons 2, 3, and 5 are no longer open for consideration. Discussion thesof has been precluded by the decision of the United States Supreme Court in the Yamashita Case. Reason 6 does not go to jurisdiction but rather to the decision of the Commission.

The first objection raised is capable of two interpretations. The first is that the Supreme Commander of the Allied Powers has no authority to appoint a commission. The second is he has no authority to appoint a commission to try a Japanese civilian not accompanying or acting with the Japanese Army.

Considering the first phrase, it is the genral concept within military establishments that the commanders possess the power to appoint such tribunals as are necessary for them to maintain discipline and punish offenders. Such authority usually comes from legislative acts, treaties, declarations, and the like. And, if it be stated that none of those sources exist in the instant case, it may be said the authority so to do comes from "the general usage of the military service, or what may not unfitly be called the customary military law." Birkhimer on Military Government and Martial Law, p. 279. However, it is the belief of this writer that the Supreme Commander for the Allied Powers does have authority to appoint these commissions which authority descended from the Potsdam Declaration through the Japanese acceptance of the terms of unconditional surrender to the Supreme Commander on his selection as such.

The second interpretation presents a more formidable and valid objection. The Regulations governing these trials states

"2. JURISDICTION.

a. Over Persons. The military commissions appointed hereunder shall have jurisdiction over all persons charged with war crimes who are in the custody of the convening authority at the time of the trial."

A Proclamation issued by the President of the United States 2 July

1942.

(56 Stat at Large 1964) says in part:

> "all persons who are subjects, citizens or residents of any nation at war with the United States or who give obedience to or act under the direction of any such nation, and who during time of war enter or attempt to enter the United States or any . . . possession thereof, . . . and are charged with committing . . . violations of the law of war, shall be subject to the law of war and to the jurisdiction of military tribunals;"

The accused is a Japanese civilian, identified as being the president of a Japanese Neighborhood Association, who in the company and command of Japanese soldiers did, at one time, investigate the Torres family and later dispose of some part thereof through stabbing, bayoneting or shooting. Had he done this alone and with no reference to Japanese military forces a question might be raised whether or not it was merely the commission of murder triable in the civilian courts. See opinion of Theater Judge Advocate, United States vs. Mariano Uyeki, 8 March 1946. However, the evidence herein, unrefuted by the defense, establishes a connection between the accused and the military sufficient to give this offense the color of a war crime and bring it within the jurisdiction of this commission. See, also, Winthrop, Military Law and Precedents, (2d ed) pp. 838 and 839, as to classes of persons amenable to and offenses cognizable by military commissions.

The foregoing discussion has been premised on the assumption the Supreme Commander actually appointed this commission. There is no contention he actually did appoint this commission, but by their fourth ground of objection the defense counsel contend his authority to appoint this commission cannot be delegated and redelegated. Is there any delegation of authority to appoint this commission?

An examination of the original letter from General Headquarters, Supreme Commander for the Allied Powers, reveals there is no delegation of authority therein. At most it is an order to take certain action in a particular place with reference to

a named person (R 10). The letter begins "It is desired...". The inference is the individual addressed already possesses authority to establish the commission necessary to carry out the desire of the headquarters writing the letter.

To this letter is added an indorsement addressed to the Commanding General, AFWESPAC. This indorsement says, in part, "Pursuant to basic communication you are hereby directed to appoint a Military Commission. . .the action of the appointing authority will be forwarded." Nothing is therein contained which intimates authority to convene a military commission is being granted by either the letter or the indorsement. The whole tenor of the letter and the indorsement is that the addressee already possesses the power to appoint or convene military commissions. The letter and indorsement convey the desire of higher authority that he do so.

That General Styer had the authority to appoint such a commission was recognized in the Yamashita case by the United States Supreme Court wherein it said,

> "The Congressional recognition of military commissions and its sanction of their use in trying offenses against the law of war to which we have referred, sanctioned their creation by military command in conformity to long established American precedents. Such a commission may be appointed by any field commander, or by any commander competent to appoint a general court martial, as was General Styer, who had been vested with that power by order of the President. 2 Winthrop, Military Law and Precedents, 2d ed., 1302; cf. Article of War 8."

By reason of the foregoing, it is apparent no authority was delegated or redelegated to General Styer by the Supreme Commander for the Allied Powers or the Commanding General, AFPAC, that he already possessed the authority to appoint this commission, and the objection raised must fail.

It is the considered opinion of this reviewer the Commission had jurisdiction of the person of the accused and it properly denied the motion to dismiss.

B. As to Procedure.

1. The members of the Commission were qualified to sit on this matter and they and the prosecution, interpreters and reporters were duly sworn.

2. The accused was informed of his rights in open court and was competently and ably represented by counsel appointed by the convening authority and of accused's choice. The charge and specifications were furnished the accused in the Japanese language and all testimony at the trial was translated into Japanese.

3. The trial procedure established by the Regulations governing these trials was complied with in all respects.

4. The findings and sentence were returned with the requisite two-thirds vote in the affirmative by the members of the Commission constituting a quorum.

C. As to Evidence.

This matter must be considered entirely in the light of the evidence presented by the prosecution. The accused neither took the stand nor offered any evidence in his behalf. He must prevail, if he is to, on the weakness of the case built by the prosecution.

Basic crime of which the accused stands charged is murder and attempted murder. Murder in itself is not a crime over which the Commission has jurisdiction unless it was committed under conditions which establish it as a war crime.

What makes an ordinary crime a war crime depends on the relationship borne by the participants to the belligerent nations. In the instant case the alleged deceased was a Filipina. The ones against whom an attempt on their lives was made were also Filipino civilians. They were unarmed and not shown to have been participating in any way in the active conduct of opposition to the Japanese Army which at the time of the crime held them in subjugation. The accused was a Japanese civilian,

president of the Japanese Neighborhood Association of Biao, and in some capacity connected with the Japanese Army in that the evidence shows: (1) He at one time took the Torres family to the Kempei Tai for investigation, at the same time searching their house; (2) he commanded Japanese soldiers at the time the execution of one person and the attempted execution of four persons took places His particular capacity with the Japanese Army is not important in view of the Presidential Proclamation, hereinbefore cited, and paragraph 2, a., of the Regulations Governing Trials of Accused War Criminals (R 2). What is important is that he commanded Japanese soldiers and in concert with them committed the crime with which he stands charged.

It is the opinion of this reviewer the accused was a Japanese civilian connected with the Japanese Army and while occupying such position committed a crime falling within the definition of a war crime.

The position of the accused was discussed first because it is primary in importance in this matter. If there was not an alleged war crime committed by the accused making him a war criminal the Commission would be without jurisdiction to try him. The next question hinges on the proof of a crime.

There was some argument whether the corpus delicti of the crime was established by the proof presented. Wharton described corpus delicti of a crime as the body or the substance of the crime. It includes two elements: the act and the criminal agency of the act. The corpus delicti may be established by circumstantial evidence. An example of sufficient circumstantial evidence of death is given by Wharton as follows:

"Death is sufficiently shown by the testimony of a witness that he saw the flash and heard the report, and that deceased fell to the ground, declaring he was shot, and that accused did the shooting." Wharton's Criminal Evidence (11th ed) p. 1506.

In the evidence in this case we find the accused was seen to hack and stab a woman who fell to the ground. He was in command of soldiers at the shooting of two boys who, after the witness saw the soldiers aim and fire at them, fell to the ground. A soldier under the command of the accused was seen to stab one of the alleged deceased in the back and she was dragged into the bushes. Later, bones identified by her sister and brother as being the skeleton of their sister were exhumed. Here is more than a sufficiency of evidence to establish the death of these people at the hand or under the command of the accused. The commission found him guilty of killing one Aurora Torres, she who was seen stabbed and whose skeleton was exhumed. The commission was justified in arriving at the conclusion the defendant was guilty of killing Aurora Torres. See Wharton's Criminal Evidence (11th ed) p. 1499 et seq; Underhill's Criminal Evidence (4th ed) p. 41 et seq; 20 American Jurisprudence, section 1230 et seq/ It would have been justified in finding him guilty of killing the other three alleged killed in Specification 1, as amended.

IV. CLEMENCY.

No application for clemency has been presented by counsel for the accused and none is recommended.

V. RECOMMENDATION.

It is recommended the sentence herein be approved and the record of trial be forwarded to the Commander-in-Chief, United States Army Forces, Pacific for action under paragraph 2, First Indorsement, General Headquarters, United States Army Forces, Pacific, 12 February 1946, to Letter, General Headquarters, Supreme Commander for the Allied Powers, file AG 000.5 (12 Feb 46) LS,

Subject: Trial of Tetsuo Naito, 12 February 1946.

The form of action designed to effect the foregoing recommendation is attached.

HOWARD C. GRAHAM
1st Lt., TC
Asst. Staff Judge Advocate

I CONCUR:

ASHTON M. HAYNES
Colonel, JAGD
Staff Judge Advocate

BEFORE THE
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

* * * * * * * * * * * * * * * *

UNITED STATES OF AMERICA

*

vs

*

TETSUO MAITO

* * * * * * * * * * * * * * * *

ARRAIGNMENT
AND
PUBLIC TRIAL

VOLUME I

PAGES 1 To 78

MANILA, P. I.

DATE 15 March 1946

COPY No. #2

AUTHENTICATION

THIS CERTIFIES that this Volume is part of the Official Record of the Proceedings of the Military Commission appointed by Paragraph 3 of Special Orders No. 60, Headquarters, United States Army Forces, Western Pacific, dated 13 March 1946; Paragraph 51 of Special Orders No. 61, Headquarters, United States Army Forces, Western Pacific, dated 14 March 1946, in the trial of the United States of America against Tetsuo Naito.

John A. Chase

JOHN A. CHASE
Lt. Colonel, (CMP) FA
President and Law Member
of Commission

BEFORE THE
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

* * * * * * * * * * * * * * * * *

UNITED STATES OF AMERICA)
)
vs)
)
TETSUO NAITO)

* * * * * * * * * * * * * * * * *

ARRAIGNMENT
AND
PUBLIC TRIAL

Court No. 2B
High Commissioner's Residence,
Manila, P.I.
15 March 1946

Met, pursuant to notice, at 0845 hours.

MEMBERS OF MILITARY COMMISSION:

LT. COL. JOHN A. CHASE, (CMP)FA, President and Law Member

LT. COL. JOHN L. HITCHINGS, CAC
MAJOR HAROLD E. WARREN, CMP
CAPTAIN JACK ELLINGSON, CMP

APPEARANCES:

FOR THE PROSECUTION:

CAPTAIN SAMUEL ROWE, QMC, Prosecutor

FOR THE DEFENSE:

1ST LIEUTENANT CLARENCE L. WATERS, CMP, Chief Defense Counsel

2D LIEUTENANT JOHN E. McCULLOUGH, TC, Asst. Defense Counsel.

INTERPRETERS FOR THE COMMISSION:

LT. RAYMOND NIMURA
T/3 GEORGE S. BABA
T/4 GEORGE USHIJIMA
FILOMENA ZOSA
PANFILIO ALPUERTO

OFFICIAL REPORTER FOR THE COMMISSION:

JOHN L. BARBATO

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P R O C E E D I N G S

At 0845 hours, 15 March 1946, the Commission convened at which time the proceedings were as follows:

COLONEL CHASE: The Commission will be in session.

CAPTAIN ROWE: If the Commission please, inasmuch as the proceedings to follow involve Japanese, it is requested that the proceedings be translated from English to Japanese.

COLONEL CHASE: The Official Interpreters will be used.

CAPTAIN ROWE: There has been referred to this Commission for trial the case of United States of America against Tetsuo NAITO.

All members of the Commission are present, the Accused is now present, together with his regularly appointed Defense Counsel and counsel of his choice; the Prosecution is ready to proceed.

COLONEL CHASE: You may proceed.

CAPTAIN ROWE: The Prosecution at this time submits for incorporation into the record of these proceedings, the following documents:

Letter Order, A.G. 000.5 dated 5 December 1945, IS, General Headquarters, Supreme Commander for the Allied Powers, Subject, "Regulations Governing the Trials of Accused War Criminals":

RESTRICTED

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

AG 000.5 (5 Dec 45) LS

APO 500
5 December 1945

SUBJECT: Regulations Governing the Trials of Accused War Criminals.

TO : Commander-in-Chief, United States Army Forces, Pacific, APO 500
Commanding General, Sixth Army, APO 442
Commanding General, Eighth Army, APO 343
Commanding General, XXIV Corps, APO 235

The following rules and regulations will govern the trials of persons, units and organizations accused as war criminals:

1. ESTABLISHMENT OF MILITARY COMMISSIONS.

a. General. Persons, units and organizations accused as war criminals will be tried by military commissions to be convened by, or under the authority of, the Supreme Commander for the Allied Powers.

b. Number and Types. The commissions will be established dependent upon the number, nature of the offenses involved and the offenders to be tried. Such commissions may include, among others, international military commissions consisting of representatives of several nations or of each nation concerned, appointed to try cases involving offenses against one (1) or more nations.

2. JURISDICTION.

a. Over Persons. The military commissions appointed hereunder shall have jurisdiction over all persons charged with war crimes who are in the custody of the convening authority at the time of the trial.

b. Over Offenses.

(1) Military commissions established hereunder shall have jurisdiction over all offenses including, but not limited to, the following:

(a) The planning, preparation, initiation or waging of a war of aggression or a

war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

(b) Violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory; murder or ill-treatment of prisoners of war or internees or persons on the seas or elsewhere; improper treatment of hostages; plunder of public or private property; wanton destruction of cities, towns or villages; or devastation not justified by military necessity.

(c) Murder, extermination, enslavement, deportation and other inhuman acts commited against any civilian population before or during the war, or persecutions on political, racial or religious grounds in execution of, or in connection with, any crime defined herein, whether or not in violation of the domestic laws of the country where perpetrated.

(2) The offense need not have been committed after a particular date to render the responsible party or parties subject to arrest, but in general should have been committed since or in the period immediately preceding the Mukden incident of September 18, 1931.

3. MEMBERSHIP OF COMMISSION.

a. Appointment. The members of each military commission will be appointed by the Supreme Commander for the Allied Powers, or under authority delegated by him. Alternates may be appointed by the convening authority. Such alternates shall attend all sessions of the commission, and in case of illness or other incapacity of any principal member, an alternate shall take the place of that member. Any vacancy among the members or alternates, occurring after a trial has begun, may be filled by the convening authority, but the substance of all proceedings had and evidence taken in that case shall be made known to that new member or alternate in open court before the trial proceeds.

b. Number of Members. Each commission shall consist of not less than three (3) members.

c. Qualifications. The convening authority shall appoint to the commission persons whom he determines to be competent to perform the duties involved and not disqualified by personal interest or prejudice, provided that no person

shall be appointed to hear a case which he personally investigated, nor if he is required as a witness in that case. A commission may consist of Army, Navy or other service personnel, or of both service personnel and civilians. One specially qualified member shall be designated as the law member whose ruling is final insofar as concerns the commission on an objection to the admissibility of evidence offered during the trial.

d. Voting. Except as to the admissibility of evidence, all rulings and findings of the commission shall be by majority vote, except that conviction and sentence shall be by the affirmative votes of not less than two-thirds (2/3) of the members present.

e. Presiding Member. In the event that the convening authority does not name one of the members as the presiding member, the senior officer among the members of the commission present shall preside, or such other member as the senior officer may designate.

4. PROSECUTORS.

a. Appointment. The convening authority shall designate one or more persons to conduct the prosecution before each commission. Where offenses involve nationals of more than one nation, each nation concerned, in the discretion of the convening authority, may be represented among the prosecutors.

b. Duties. The duties of the prosecutors are:

(1) To prepare and present charges and specifications for reference to a commission.

(2) To prepare cases for trial and to conduct the prosecution before the commission of all cases referred for trial.

5. POWERS AND PROCEDURE OF COMMISSIONS.

a. Conduct of the Trial. A commission shall:

(1) Confine each trial strictly to a fair, expeditious hearing on the issues raised by the charges, excluding irrelevant issues or evidence and preventing any unnecessary delay or interference.

(2) Deal summarily with any contumacy or contempt, imposing any appropriate punishment therefor.

(3) Hold public sessions except when otherwise decided by the commission.

(4) Hold each session at such time and place as it shall determine, or as may be directed by the convening authority.

b. Rights of the Accused. The accused shall be entitled:

(1) To have in advance of trial a copy of the charges and specifications clearly worded so as to apprise the accused of each offense charged.

(2) To be represented, prior to and during trial by counsel appointed by the convening authority or counsel of his own choice, or to conduct his own defense.

(3) To testify in hiw own behalf and have his counsel present relevant evidence at the trial in support of his defonse, and cross-examine each adverse witness who personally appears before the commission.

(4) To have the substance of the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them.

c. Witnesses. The Commission shall have power:

(1) To summon witnesses and require their attendance and testimony under penalty, to administer oaths or affirmations to witnesses and other persons and to question witnesses.

(2) To require the production of documents and other evidentiary material.

(3) To delegate to the Prosecutors appointed by the convening authority the powers and duties set forth in (1) and (2), above.

(4) To have evidence taken by a special commissioner appointed by the commission.

d. Evidence.

(1) The commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or such as in the commission's opinion would have probative value in the mind of a reasonable man. The commission shall apply the rules of evidence and pleading

set forth herein with the greatest liberality to achieve expeditious procedure. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted:

(a) Any document irrespective of its classification which appears to the commission to have been signed or issued by any officer, department, agency or member of the armed forces of any government without proof of the signature or of the issuance of the document.

(b) Any report which appears to the commission to have been signed or issued by the International Red Cross or a member thereof, or by a doctor of medicine or any medical service personnel, or by an investigator or intelligence officer, or by any other person whom the commission considers as possessing knowledge of the matters contained in the report.

(c) Affidavits, depositions or other signed statements.

(d) Any diary, letter or other document, including sworn or unsworn statements, appearing to the commission to contain information relating to the charge.

(e) A copy of any document or other secondary evidence of its contents, if the original is not immediately available.

(2) The commission shall take judicial notice of facts of common knowledge, official government documents of any nation, and the proceedings, records and findings of military or other agencies of any of the United Nations.

(3) A commission may require the prosecution and the defense to make a preliminary offer of proof, whereupon the commission may rule in advance on the admissibility of such evidence.

(4) If the accused is charged with an offense involving concerted criminal action upon the part of a military or naval unit, or any group or organization, evidence which

has been given previously at a trial resulting in the conviction of any other member of that unit, group or organization, relative to that concerted offense, may be received as prima facie evidence that the accused likewise is guilty of that offense.

(5) The findings and judgment of a commission in any trial of a unit, group, or organization with respect to the criminal character, purpose or activities thereof shall be given full faith and credit in any subsequent trial, by that or any other commission, of an individual person charged with criminal responsibilith through membership in that unit, group or organization. Upon proof of membership in that unit, group or organization convicted by a commission, the burden shall be on the accused to establish by proof any mitigating circumstances relating to his membership or participation therein.

(6) The official position of the accused shall not absolve him from responsibility, nor be considered in mitigation of punishment. Further, action pursuant to order of the accused's superior, or of his government, shall not constitute a defense, but may be considered in mitigation of punishment if the commission determines that justice so requires.

(7) All purported confessions or statements of the accused shall be admissible without prior proof that they were voluntarily given, it being for the commission to determine only the truth or falsity of such confessions or statements.

e. Trial Procedure. The proceedings at each trial will be conducted substantially as follows, unless modified by the commission to suit the particular circumstances:

(1) Each charge and specification will be read, or its substance stated, in open court.

(2) The presiding member shall ask each accused whether he pleads "Guilty" or "Not Guilty".

(3) The prosecution shall make its opening statement.

(4) The presiding member may, at this or any other time, require the prosecutor to state what evidence he proposes to submit to the

commission, and the commission thereupon may rule upon the admissibility of such evidence.

(5) The witnesses and other evidence for the prosecution shall be heard or presented. At the close of the case for the prosecution, the commission may, on motion of the defense for a finding of not guilty, consider and rule whether the evidence before the commission supports the charges against the accused. The commission may defer action on any such motion and permit or require the prosecution to reopen its case and produce any further available evidence.

(6) The defense may make an opening statement prior to presenting its case. The presiding member may, at this or any other time, require the defense to state what evidence they propose to submit to the commission, whereupon the commission may rule upon the admissibility of such evidence.

(7) The witnesses and other evidence for the defense shall be heard or presented. Thereafter, the prosecution and defense may introduce such evidence in rebuttal as the commission may rule admissible.

(8) The defense, and thereafter the prosecution, shall address the commission.

(9) The commission thereafter shall consider the case in closed session and unless otherwise directed by the convening authority, announce in open court its judgment and sentence, if any. The commission may state the reasons on which the judgment is based.

f. Record of Proceedings. Each commission shall make a separate record of its proceedings in the trial of each case brought before it. The record shall be prepared by the prosecutor under the direction of the commission and submitted to the defense counsel. The commission shall be responsible for its accuracy. Such record, certified by the presiding member of the commission or his successor, shall be delivered to the convening authority as soon as possible after the trial.

g. Sentence. The commission may sentence an accused, upon conviction, to death by hanging or shooting, imprisonment for life or for any less term, fine or such other punishment as the commission shall determine to be proper. The commission may also order confiscation of any property of a convicted

accused, deprive that accused of any stolen property or order its delivery to the Supreme Commander for the Allied Powers for disposition as he shall find to be proper, or may order restitution with appropriate penalty in cases of default.

h. Approval of Sentence. No sentence of a military commission shall be carried into effect until approved by the officer who convened the commission, or his successor. Such officer shall have authority to approve, mitigate, remit in whole or in part, commute, suspend, reduce or otherwise alter the sentence imposed, or (without prejudice to accused) remand the case for rehearing before a new military commission; but he shall not have authority to increase the severity of the sentence. No sentence of death shall be carried into execution until confirmed by the Supreme Commander for the Allied Powers. Except as herein provided, the judgment and sentence of a commission shall be final and not subject to review.

6. RULE MAKING POWER.

Supplementary Rules and Forms. Each commission shall adopt rules and forms to govern its procedure, not inconsistent with the provisions hereof, or such rules and forms as may be prescribed by the convening authority or by the Supreme Commander for the Allied Powers.

By command of General MacARTHUR:

H. W. ALLEN,
Colonel, A.G.D.,
Asst Adjutant General.

Letter Order, A. G. 000.5 LS, dated 12 February 1946, General Headquarters, Supreme Commander for the Allied Powers, Subject, "Trial of Tetsuo NAITO".

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

AG 000.5 (12 Feb 46) LS

APO 500
12 February 1946

SUBJECT: Trial of Tetsuo Naito.

TO : Commander-in-Chief
United States Army Forces, Pacific, APO 500.

1. It is desired that a Military Commission be appointed for the trial of Tetsuo Naito, a Japanese civilian, acting together and in concert with members of the Imperial Japanese Armed Forces, for the alleged offenses indicated in the attached Charge.

2. The trial is to be held in the city of Manila, Philippine Islands. The trial shall be conducted in conformity with Regulations Governing the Trials of Accused War Criminals, dated 5 December 1945, General Headquarters, Supreme Commander for the Allied Powers.

3. The record of trial including judgment or sentence and the action of the appointing authority will be forwarded to this headquarters. Unless otherwise directed, the execution of any death sentence will be withheld pending the action of the Supreme Commander for the Allied Powers.

FOR THE SUPREME COMMANDER:

(Sgd.) H. W. Allen
H. W. ALLEN
Colonel, AGD,
Asst Adjutant General

1 Incl:
Chg vs Tetsuo Naito

BASIC Ltr, GHQ, SCAP, file 000.5 (12 Feb 46) LS dated 12 Feb 46 subj: "Trial of Tetsuo Naito."

AG 000.5 (12 Feb 46) LS 1st Ind.

General Headquarters, United States Army Forces, Pacific, APO 500, 12 February 1946.

TO: Commanding General, United States Army Forces, Western Pacific, APO 707.

1. Pursuant to basic communication you are hereby directed to appoint a Military Commission for the trial of the following named Japanese civilian, acting together in concert with members of the Imperial Japanese Armed Forces:

Tetsuo Naito

2. All records of trial including judgment or sentence and the action of the appointing authority will be forwarded to this headquarters. Unless otherwise directed, the execution of any death sentence will be withheld pending the action of the Supreme Commander for the Allied Powers.

3. The following named officers, assigned to the War Crimes Investigating Detachment, this headquarters, are made available to your command for service as prosecution personnel on the Military Commission to be convened by you for this purpose:

Capt. James J. Jenkins, INF, Chief Prosecutor
Capt. Samuel Rowe, QMC, Assistant Prosecutor

By command of General MacARTHUR:

(Sgd.) H. W. Allen
H. W. ALLEN
Colonel, AGD,
Asst. Adjutant General

1 Incl:
Chg as indicated

At this time, the Prosecution submits for the record an extract copy of Special Order No. 60, Paragraph 3, Headquarters, United States Army Forces, Western Pacific, dated 13 March 1946, stating that the following officers are appointed members of the Military Commission.

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC

APO 707
13 March 1946

Special Orders)
:
No. .....60)

EXTRACT

3. The following officers are appointed members of a Military Commission to meet in the City of Manila, Philippine Islands, at the call of the President thereof, for the trial of Tetsuo Naito, accused war criminal. (Authority: 1st Ind. GHQ, AFPAC, APO 500, 12 Feb 46, to letter GHQ, SCAP, file AG 000.5 (12 Feb 46) LS, dated 12 Feb 46, subj: "Trial of Tetsuo Naito"):

Lt. Col. John A. Chase	(CMP) FA
Lt. Col. John L. Hitchings	CAC
Maj. Harold E. Warren	CMP
Capt. Jack Ellingson	CMP

The prosecution will be conducted by Capt. Samuel Rowe, QMC. The defense will be conducted by 1st Lt. Clarence L. Waters, CMP, Chief Defense Counsel and 2d Lt. John E. McCullough, TC, Asst. Defense Counsel.

The Commission will follow the provisions of Letter, GHQ, SCAP, dated 5 December 1945, subj: "Regulations Governing the Trial of Accused War Criminals," and is authorized to employ or appoint such interpreters, stenographic reporters and other assistants as it shall deem advisable.

The record of trial including any judgment or sentence will be transmitted directly to this headquarters for action by the appointing authority.

BY COMMAND OF LIEUTENANT GENERAL STYER:

OFFICIAL:

(Sgd.) Benito Morales
BENITO MORALES
Colonel, AGD
Asst Adj Gen.

J G CHRISTIANSEN
Major General, USA
Deputy Commander, and
Chief of Staff

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War Crimes (75)

RESTRICTED

LIEUTENANT WATERS: If the Commission please, we have read it, we are familiar with it and to facilitate the speed of the trial, we will agree to have it submitted.

COLONEL CHASE: With the consent of the Defense, this letter will be admitted into the record without being read.

CAPTAIN ROWE: The Prosecution next submits Letter signed by the President of the Commission, Subject, "Summoning and Swearing Witnesses for the Tetsuo NAITO Trial", dated 14 March 1946, authorizing the Prosecution to summon witnesses and swear witnesses for this trial.

MILITARY COMMISSION
CONVENED BY
COMMANDING GENERAL
UNITED STATES ARMY FORCES, WESTERN PACIFIC

APO 707
Date 14 March 1946

Subject: Summoning and Swearing Witnesses for NAITO trial.
TO : Prosecutor for Commission.

1. Pursuant to authority of provisions of letter, General Headquarters, Supreme Commander for the Allied Powers, 5 December 1945, subject; "Regulation Governing the trials of Accused War Criminals," you are authorized, as prosecutor of cases referred for trial to the Military Commission Convened by the Commanding General, United States Army Forces, Western Pacific, by par. 3, Special Order 60, dated 13 March 1946 to issue, for this commission, summons to compel the attendance of witnesses to any such trial and to require such witnesses to bring with them any papers or documents which may be used as evidence

in such trial, and to administer oaths or affirmations to witnesses and other persons.

(Sgd.) John A. Chase
JOHN A. CHASE, Lt Col (CMP)FA
President of the Commission

COLONEL CHASE: It will be admitted.

CAPTAIN ROWE: The Prosecution is now ready to proceed with the arraignment of Tetsuo NAITO.

COLONEL CHASE: The Reporter will be sworn.

(Whereupon John L. Barbato was sworn in as Official Court Reporter.)

CAPTAIN ROWE: The Interpreters will be sworn. In this instance I would like also to swear the Visayan Interpreters who are present.

(Whereupon, Lt. Raymond Nimura, T/3 George S. Baba, T/4 George Ushijima, Japanese interpreters; Filomena Zosa and Panfilio Alpuerto were sworn in as Official Court Interpreters.)

COLONEL CHASE: The Commission will be sworn.

(Whereupon Lt. Col. John A. Chase, (CMP) FA, Lt. Col. John L. Hitchings, CAC, Maj. Harold E. Warren, CMP, and Capt. Jack Ellingson, CMP, were sworn in as members of the Commission.)

COLONEL CHASE: The Prosecution will be sworn.

(Whereupon Captain Samuel Rowe, QMC, was duly sworn as Prosecutor.)

CAPTAIN ROWE: A certified copy of the Charges and Specifications against Tetsuo NAITO, together with a true and complete translation thereof were served upon the Accused

by Captain Samuel Rowe, on 14 March 1946, at Manila, in the Philippine Islands.

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

Before the MILITARY COMMISSION convened by the COMMANDING GENERAL United States Army Forces, Western Pacific	)	UNITED STATES OF AMERICA vs Tetsuo NAITO

CHARGE

That Tetsuo NAITO, a Japanese civilian, acting together and in concert with members of the Imperial Japanese Armed Forces, did, at the time and place hereinafter set forth, and during a time of war between the United States of America, its Allies and Japan, willfully and unlawfully kill four Filipino civilians and willfully and unlawfully attempt to kill one Filipino civilian; and he thereby violated the laws of war.

SPECIFICATIONS

1. In that Tetsuo NAITO, a Japanese civilian, then President of the Japanese Neighborhood Association of Biao, Guianga District, Mindanao, Philippine Islands, and other persons whose names are unknown, connected and acting with Japan, did, at or near Biao, Guianga District, Mindanao, Philippine Islands, on or about 5 May 1945, during a time of war between the United States of America, its allies and Japan, willfully and unlawfully kill Amador CONCEPCION, Beatriz LIANGA TORRES, Aurora TORRES, unarmed and non-combatant Filipino civilians, by striking them with a sword, bayonetting them and by shooting them, in violation of the laws of war.

2. In that Tetsuo NAITO, a Japanese civilian, then President of the Japanese Neighborhood Association of Biao, Guianga District, Mindanao, Philippine Islands, and other persons whose names are unknown, connected and acting with

Japan, did, at or near Biao, Guianga District, Mindanao, Philippine Islands, on or about 5 May 1945, during a time of war between the United States of America, its allies and Japan, willfully and unlawfully attempt to kill Virginia TORRES, an unarmed and non-combatant Filipino civilian, by stabbing her several times with a bayonet, in violation of the laws of war.

Dated: 11 February 1946.

/s/ Alva C. Carpenter
ALVA C. CARPENTER
Colonel, JAGD
United States Army

AFFIDAVIT

Before me personally appeared the above-named accuser this 11th day of February 1946, and made oath that he is a person subject to military law and that he personally signed the foregoing charge; and further that he has investigated the matters set forth in the charge, and that it is true in fact, to the best of his knowledge and belief.

/s/ Edmund M. Sweeney

1st Lt., JAGD. AUS

GENERAL HEADQUARTERS
UNITED STATES ARMY FORCES, WESTERN PACIFIC
APO 707

13 March 1946

Referred for trial to Capt. Samuel Rowe, QMC, Chief Prosecutor for the Military Commission appointed by paragraph 3, Special Orders No. 60, this Headquarters, 13 March 1946.

By command of Lieutenant General STYER:

/s/ J. J. Gerhardt
/t/ J. J. GERHARDT
Colonel, AGD
Adjutant General

I hereby certify that I have served a copy hereof, together with a true and complete translation thereof into

into Japanese, on the above-named accused this 14th day of March 1946.

/s/ Samuel Rowe
Capt., QMC
War Crimes Invest. Br.
Prosecution Section

COLONEL CHASE: The rights of the Accused as set forth in Paragraph 5 (b) of letter dated 5 December 1945, General Headquarters, Supreme Commander for the Allied Powers, entitled, "Regulations Governing Trials of Accused War Criminals" heretofore introduced will now be read and explained to the Accused.

The Accused, Defense Counsel and Prosecutor will rise and face the Commission.

The portion of this document referred to which concerns the Accused at this time is as follows:

"To have in advance of trial a copy of the charges and specifications clearly worded so as to apprise the accused of each offense charged.

"To be represented, prior to and during trial by counsel appointed by the convening authority or counsel of his own choice, or to conduct his own defense.

"To testify in his own behalf and have his counsel present relevant evidence at the trial in support of his defense, and cross-examine each adverse witness who personally appears before the commission.

"To have the substance of the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them."

Whom does the Accused wish to introduce as Defense Counsel?

ACCUSED: (Through Interpreter) Lieutenant Waters.

COLONEL CHASE: Does the Accused wish the Charges

and Specifications and Documentary Evidence translated to him?

CAPTAIN ROWE: I think at this time with reference to the Charges and Specifications, inasmuch as the Accused has already received, two weeks prior to the actual date of trial, a knowledge of this Charge and Specifications, it was agreed with Defense Counsel that the Charges and Specifications be read in English.

COLONEL CHASE: Is that satisfactory?

LIEUTENANT WATERS: Very satisfactory to the Defense.

COLONEL CHASE: It will be read in English.

(Whereupon the Prosecution read the Charges and Specifications to the Accused.)

COLONEL CHASE: Tetsuo NAITO, at this time the Commission will hear your plea to the Charge and Specifications which had been read to you. You may plead either Guilty or Not Guilty.

ACCUSED: I plead Not Guilty.

COLONEL CHASE: Does the Prosecution have any recommendation to make before the Commission at this time?

CAPTAIN ROWE: Sir, prior to introducing the charge into the record --

COLONEL CHASE: It will be received into the record.

CAPTAIN ROWE: At this time the Prosecution and Defense stipulate that there is a slight variance in Specification 1 and the Charge, in that one name of a civilian who had been killed was left out and stipulated to amend the Specification to include that name; his name is Eugenio Torres.

COLONEL CHASE: Is there any comment by the Defense as to the motion of the Prosecution to amend the Specification?

LIEUTENANT WATERS: Defense has no objection, if the Commission please, without prejudice to the Defense.

COLONEL CHASE: There being no objection on the part of the Defense, Prosecution's motion will be allowed.

CAPTAIN ROWE: The Prosecution has no further recommendation to make before the Commission. If the Defense has no further recommendation, the Prosecution is ready to proceed with the trial.

COLONEL CHASE: Does the Defense have any request to make as to time for trial or any other pertinent matters?

LIEUTENANT WATERS: If the Commission please, prior to trial and with oral agreement with Captain Rowe of the Prosecution, the Defense has reserved the right to subpoena a witness, Corporal Taki, after the Prosecution has rested provided he can be located and that he is a necessary witness at that time.

COLONEL CHASE: Subject to the instructions recently issued to the Commission under which the President of the Commission is charged with the duty of determining the necessity of calling any witness not originally scheduled, the Commission will receive the request of the Defense and give a decision with regard to it, giving full and liberal consideration to the rights of the Accused.

LIEUTENANT WATERS: That is agreeable to the Defense.

CAPTAIN ROWE: If the Commission please, the Prosecution requests a short recess.

COLONEL CHASE: The Commission will recess for ten minutes.

(Short recess.)

COLONEL CHASE: The Commission will be in session.

CAPTAIN ROWE: Let the record show that the Commission is present, the Accused is present with his duly appointed Defense Counsel and counsel of his choice; the Prosecution is ready to proceed.

COLONEL CHASE: Let the record show also that throughout the proceedings until now, the Accused has also been accompanied by his personal interpreter.

CAPTAIN ROWE: If the Commission please, inasmuch as this stipulated amendment had been made to Specification 1, it is requested that the Accused plead to the amended Specification. The amended specification will be read.

Captain Rowe reading:

"SPECIFICATIONS"

"1. In that Tetsuo NAITO, a Japanese civilian, then President of the Japanese Neighborhood Association of Biao, Guianga District, Mindanao, Philippine Islands, and other persons whose names are unknown, connected and acting with Japan, did, at or near Biao, Guianga District, Mindanao, Philippine Islands, on or about 5 May 1945, during a time of war between the United States of America, its allies and Japan, willfully and unlawfully kill Amador CONCEPCION, Beatriz LIANGA TORRES, Aurora TORRES, Eugenio TORRES, unarmed and non-combatant Filipino civilians, by striking them with a sword, bayonetting them and by shooting them, in violation of the laws of war."

COLONEL CHASE: The record will show Specification 1 having been amended to add the name of Eugenio Torres. The draft of the Specification as amended will be given to the Interpreter and translated to the Accused.

INTERPRETER: Yes, sir.

LIEUTENANT WATERS: If the Commission please, the draft of the Specification as amended has been read and translated to the Accused. He is now ready to plead.

COLONEL CHASE: Tetsuo Naito, how do you plead as

to Specification I as amended, Specification 2 and to the Charge, Guilty or Not Guilty?

ACCUSED: (Through Interpreter Baba) Not Guilty.

CAPTAIN ROWE: The Prosecution is ready to proceed.

COLONEL CHASE: The Prosecution will proceed.

CAPTAIN ROWE: Prosecution would like to make an opening statement. The Prosecution in this case will attempt to prove that the Accused, Tetsuo Naito, is clearly a war criminal. He has incited and conspired in acts in violation of the laws of war and possessed a power and duty to prevent cold calculated murder and failed to do so. In fact, he took a consenting part in the atrocities and refused to raise a hand in opposition. Attention is invited to Paragraph 10 of the Potsdam Declaration, July 6, 1945, stating, "stern justice shall be meted out to all war criminals". This declaration was accepted by the Japanese Government by its note, August 10, 1945. Under that declaration, the Japanese Government also takes this reponsibility. Reason and humanity cannot accept the theory that someone else is responsible for war crimes. All are responsible. The acts the Prosecution will prove have gone beyond the scope of passionate war.

I call my first witness. Insofar as this witness is able to speak English reasonably well, I request that she be permitted to testify in English and any phrase not understood she will be helped by the Interpreter.

COLONEL CHASE: Witness may testify in English with such assistance from the Interpreter as may be necessary.

VIRGINIA TORRES

called as a witness on behalf of the Prosecution, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY CAPTAIN ROWE:

Q Miss Torres, will you please give your full name, your age, and the place where you reside.

A I am Virginia Torres. I am 17 years old. I live in Biao, Guianga District, Mindanao.

COLONEL CHASE: Will you clear up the name of that town so the record will be correct?

INTERPRETER ZOSA: Biao, Guianga.

Q Do you recall where you were about February, 1945?

A I was in Biao, Guianga.

Q Did anything strange happen about February, 1945?

A Yes, sir.

Q Will you please explain what happened.

A That night there was Tetsuo Naito -- (Pointing to the Accused)

CAPTAIN ROWE: Let the record show that the witness pointed to the Accused, Tetsuo Naito.

A -- this Naito went to the house with two Kempei Tais -- M.P. -- and he was calling for my mother and he was telling my mother to open the door and my mother does not want to open the door for we were only girls inside. But he said it is the order. So, my mother told Jose Amasio to open the door; so, Jose opened the door and let Naito go in. Naito asked my mother whether we got light; my mother told him we got no oil, so he went to the kitchen and there he

found the light -- the small oil -- and he lighted it. He scolded my mother for telling a lie and he went upstairs. He inspected all our baggages, open all our cupboards and get up all the things and inspected all the things. He get our love letters, and then he told my mother that very night -- that very moment -- we will follow him to the Kempei Tai house. He told my mother to dress up and follow him.

COLONEL HITCHINGS: What is that last sentence of the answer please?

WITNESS: (Through Interpreter Zosa) He told my mother to dress up and follow him.

A (Witness continuing) And my mother told him, "Suppose we will go tomorrow", but he does not want. So, I, my mother, my youngest brother and Jose dressed up, and my sister cannot go because she was very ill, because she was very ill with malaria. We left our sister and went to the Kempei Tai; we reached the Kempei Tai in the dark.

COLONEL HITCHINGS: Where did you go?

A To Biao school.

CAPTAIN ROWE: Miss Torres, will you speak louder, slower and clearer?

A (Witness continuing) When we reached the Biao school, we found out that there were many civilians inside and when it was already morning, I saw Miss Isagurre --

LIEUTENANT McCULLOUGH: Will you speak a little louder, we would like to have those names, too?

COLONEL HITCHINGS: What is that name, please?

A (Witness continuing) -- and the Into sisters.

COLONEL CHASE: Captain Rowe, if you have your record, to get this matter of names straight, will you please give us the spelling of each name as it is mentioned? She mentioned two names and we would like to get the correct spelling of all names. It will save time for the reporters, as well as to everybody else present in this courtroom.

CAPTAIN ROWE: I-s-a-g-u-r-r-e; I-n-t-o.

COLONEL HITCHINGS: There were two names given, what was the other one?

CAPTAIN ROWE: "Into".

COLONEL HITCHINGS: Are those separate names? "Into" is one name and "Isagurre" is another one. We shall take the names just one at a time.

CAPTAIN ROWE: They are two names.

COLONEL HITCHINGS: Is that all to the name, just one word?

CAPTAIN ROWE: Yes, sir.

A (Witness continuing) We were surprised -- they asked us why we were there and told them we don't know for Naito took us from the house. The following morning, everybody is ready to go to the room and the M.P.s asked questions.

CAPTAIN ROWE: Speak slowly, loudly.

A (Witness continuing) Then I was called in. The M.P. told me why were there many mens in the house and why do we always have parties and dances, and I told him --

COLONEL HITCHINGS: What was the last word, please?

REPORTER: "Parties and Dances"

A (Witness continuing) and I told him that was not true

for we are not allowing people by the house especially at night or to go out, and later I was sent out. In the afternoon we went home. That is all.

Q (By Captain Rowe) Do you know the Accused in this case?

A (Through Interpreter Zosa) Yes, I know.

Q What is his name?

A Naito.

Q Do you see him in court?

A Yes.

Q Point him out.

A There.

CAPTAIN ROWE: Let the record show that the witness pointed to the Accused.

Q When was the next time that you saw the Accused?

A That was in the month of May 5, 1945, Saturday afternoon at 3 o'clock.

Q Are you sure of that?

A Yes.

Q What happened?

A I and my eldest sister was eating and Naito came with two soldiers. Naito asked me where my mother was and I told him that she is upstairs resting. When my mother heard it she went down and met Naito. Naito ordered the soldiers to get some ropes and he also ordered the soldiers to go inside and take us in the room.

Q Who was taken in the room?

A I and my sister.

CAPTAIN ROWE: Continue.

A Then the soldiers went inside and take us in the room.

The other soldier arrived; they tied my mother.

Q Who tied your mother?

A Soldier.

Q Was Naito present?

A Yes, sir.

Q Did he see it?

A Yes, sir.

Q Did he order it?

A Yes, he ordered it.

CAPTAIN ROWE: Continue.

A And later that day, we heard footsteps going farther. My sister tried to kick but she could not for the room were well closed. Not long after, Naito, with the soldiers,went back. He called the Japanese who was guarding us --

Q When you said "went back", do you mean he came back to the house?

A Yes, sir, he came back.

Q Was he alone?

A No -- more soldiers --

Q Was anyone else besides the soldiers with him?

A No more. He told the soldiers to go out. The soldiers went out and left us. Then Naito were conversing with his soldiers and later Naito told them to kill us. The soldiers went inside and brought us out. Naito told the other soldiers to take my eldest sister and my sister followed. Naito told me to follow him. When we reached the gate we met my younger brother and Naito called the soldiers guarding my sister and I -- himself, with the two boys went back. He again ordered the soldier to get the ropes. The soldiers followed

him -- went and get ropes. While we were standing, my eldest sister asked my youngest brother whether he has seen my mother.

Q What was the name of your youngest brother?

A Eugenio Torres.

CAPTAIN ROWE: Continue.

A (Witness continuing) And my sister asked my youngest brother whether he have seen mother. My younger brother told my sister why -- what happened --

LIEUTENANT WATERS: If the Commission please, Defense would like to object to that unless the Prosecution shows that the Accused was present -- heard the conversation.

CAPTAIN ROWE: I will clarify that.

Q Were you there when your sister was talking to Eugenio?

A Yes, I was.

Q Was the Accused, Naito, there when your sister was talking to Eugenio?

A Yes.

Q Were you there when your sister was talking to Eugenio?

A Yes.

Q Did you hear everything that was said?

A Yes.

Q Now,explain what you heard.

A My sister told my youngest brother "that must be mother whom you heard screaming", and my youngest brother cried. Later, the Japanese who Naito ordered to get ropes arrived. Two boys were tied up.

COLONEL CHASE: Read the answer back.

(Answer read back.)

CAPTAIN ROWE: Miss Torres, continue slowly and loudly.

A (Witness continuing) Two boys were being tied. Naito again ordered the soldiers to take us: -- I and my sister upstairs, and he brought my -- the two boys with him. When we were upstairs we were sitting on a bed; the soldier was between I and my sister. Later we heard two shoots. Then again Naito was back and before Naito was back I and my sister were sitting on the bed. My sister told me what is the shoot about and I told her that was --

LIEUTENANT WATERS: We are objecting, if the Commission please, on the ground that it is clearly not within the presence or hearing of the Defendant.

COLONEL CHASE: Objection overruled. The customary hearsay rule of evidence under the directive of 5 December 1945 clearly does not apply and the Commission is entitled to consider it in evidence, whatever its probative value may be, any evidence which is presented.

LIEUTENANT WATERS: Exception.

Q (By Captain Rowe) Continue. What did you tell your sister?

A -- that was the two boys. My sister asked me what we are going to do and I told her "let us make some tricks for these Japanese; these Japanese guarding us would be killed", and my sister told me, "what do you want". I told her that when I stand up this guard will be looking at me and you have to rob the gun. She told me when I was planning to stand up and I saw Naito when he was coming back and -- --

CAPTAIN ROWE: Do you mean coming back to the house?

A Yes.

Q Who did you see with Naito?

A Soldiers.

Q Is that all?

A That is all. And I told my sister that it is no use. So after talking, the one soldier told us to go upstairs. Naito did not go with the soldiers. When the soldiers reached upstairs, he looked at me and my sister, and he was looking for some ropes. He could not found any but in his pocket he found a small rope. There he tied my sister and after tying ---

Q What is your sister's name?

A Aurora Torres. Here is her picture. (Witness presenting a picture.)

Q Is that your sister Aurora?

A Yes.

CAPTAIN ROWE: I would like to present the picture identified as the sister of the witness as Aurora Torres, any objections?

LIEUTENANT WATERS: No objection.

COLONEL CHASE: It will be admitted and marked for identification as Prosecution's Exhibit A.

Q (By Captain Rowe) Now, after the Japanese soldier took the rope out of his pocket, you say he tied your sister?

A Yes.

Q Is that the girl he tied in Exhibit A?

A Yes.

Q What happened after your sister was tied?

A We were told to go down and my sister -- the guard told

my sister to go down first but my sister refuses.

CAPTAIN ROWE: Miss Torres, speak slowly and carefully. Continue.

A (Witness continuing) When we were going downstairs I told my sister not to do anything against the Japanese but she told me he has no more chance for he was tied up.

Q When you say "he" you mean your sister?

A Yes.

CAPTAIN ROWE: At this time, I wish the Commission to notice that there is no variation between "he" and "she" by the Filipinos. Both boys and girls are called, "he" and "she"; they are mixed up. In the future, Miss Torres use the name or the word "sister" all the way through. Continue. Your sister is coming downstairs.

A (Witness continuing) Aurora kicked the Japanese and the Japanese rolled downstairs; I then followed at her back. The Japanese who was guarding me told me to go down first and I told him "I don't want" and told me, "Come, go on, let us go side by side". So we went down side by side. When we reached downstairs, my sister, Aurora, was waiting for us. The Japanese who was guarding Aurora told her to follow him and Aurora told me "save yourself" and I answer back, "same with you". Then we were separated. She was brought in the left and I was brought in the right. Few minutes, I turned back and saw my sister kicked the Japanese for the second time. The Japanese who was guarding her take the bayonet and struck her in the back. My sister was calling for help and I wanted to help my sister but the Japanese who was guarding me pulled my hair this way; I could not see the Japanese who was pulling my sister in the

bushes.

COLONEL CHASE: Let the record show that the witness illustrated by taking hold of her own hair how the Japanese guard held her.

A (Witness continuing) The Japanese told me to follow him. When we reached a small path I hear no more screaming. I asked the Japanese where he was taking me. He told me to the Kempei Tai and I told him, "That is not the road", for he was taking me in a thick grasses and told me to shut up. I shut up and follow him, so I followed him. When we reach the house of my auntie, which had been destroyed by the Japanese, the Japanese who was guarding me put the bayonet between us. Then he was beginning to undress himself. When I saw he was taking off his pants, I was thinking he is going to dishonor me and after dishonoring me he is going to kill me. I afraid that although I am going to be wounded -- I will not die. After praying, I happened that I glanced on the bayonet which lay on the ground; I tried to rob the bayonet and the Japanese take hold of the handle and began to strike me in my stomach, here (indicating).

CAPTAIN ROWE: Let the record indicate that the witness pointed to her stomach in the left side where the bayonet went through.

A (Witness continuing) One bayonet I fell down; the next he bayonetted a little bit farther. Then I turned; he bayonetted me again for the third time.

CAPTAIN ROWE: Let the record indicate three positions that the bayonet went into her body were pointed out by the witness.

A (Witness continuing) And the fourth I still moved and he strike me and so with the 5th and for the 6th he strike me again and it was more stronger than the 5th and it passed through.

CAPTAIN ROWE: Let the record indicate that the witness placed a finger near her left breat showing that was the 5th thrust clearly through her body and out the back, and her finger pointed to hor back as the position where the bayonet came out.

A Witness continuing) I thought that was my last and I still breathe. When I look up I saw him trying to aim again, so when he tried to strike me, I moved my neck in this way so the bayonet -- --

CAPTAIN ROWE: Let the record indicate that she moved her neck in the left direction so that the bayonet glanced across her neck.

Q (By Captain Rowe) Have you still got the scar of that thrust at the neck?

A (By Witness) Yes, sir.

Q Where is it?

A Here (indicating).

CAPTAIN ROWE: Let the record indicate that the witness placed her finger in the scar in the section in front of the trochea directly in the middle. Continue.

CAPTAIN ROWE: Continue.

A Then I did not move my head, my eyes were closed; I could not see the Japanese, so I opened my eyes, there I saw him standing beside me. I look up the sky; I never moved my eyes and he tear my dress and wiped his bayonet and throw the cloth on my face. Later, he went away, every step of him he glanced at me till he reached the road. I was fighting for my last breath, but still my heart was beating and I could still breath. I was thinking that if I don't go out from that place the Japanese might go back and kill me for the last time and so I tried my best to stand up and for the first time I failed and for the second time I succeeded. Then when I stood up my blood went out as if there was a carabao that was being killed and I begun to walk very slowly as if I was a small child learning to walk. When I was walking I turned back and saw that there were nary blood in the ground, then I tried to hold the wounds and to avoid the - - -

CAPTAIN ROWE: We will stop there. And then you took care of yourself and later cured yourself. When was the next time you heard about your mother?

A That was on July 7, 1946 when I was in Leyte.

Q You say 1946?

A Yes, sir, when I was in Davao City.

CAPTAIN ROWE: Let the record show we haven't reached July 1946.

INTERPRETER ZOSA: Last July.

Q (by Captain Rowe) When was it, in July of that same year?

A Same year.

Q Last July?

(No answer)

CAPTAIN ROWE: Let the record show she meant July 1945. Go ahead.

A (Witness continuing) I saw him while I was going to school; I met him in San Pedro Street.

COLONEL HITCHINGS: Who is that "him"?

A I met a person by the name of Simo.

Q Is that his name?

A That is what we call him.

Q Do you know his name, full name?

A Yes, Susimo Companiedo.

Q Continue. When you met Simo, what happened?

A He asked me, "Was your mother really killed?" and I answered him, "Yes," and I was asking information about my mother and later he told me that he really see the actual killing.

Q Did you say he saw the actual killing of your mother?

A Yes, sir.

Q Did he tell you by whom, who did it?

A Yes, sir.

Q Who did he say killed your mother?

A Naito.

Q Which Naito is that?

A The man sitting right here, right now.

(Witness pointed to the Accused.)

Q Was there any other Naito in the village at that time?

A No. He is the only Naito.

Q Is he known by everybody?

A Yes, sir.

Q Is this the Naito who is the president of the Japanese Association?

A Yes, he was.

Q Did Naito have a great deal to say in the community?

(Interpreter repeated the question to the Witness.)

A Yes, sir.

Q Did he ever have a lot of power as president of the association?

A Yes, sir.

Q Did he associate with the Japanese Army?

A Yes, he was.

Q Did he control Japanese soldiers?

A Yes, sir.

COLONEL CHASE: The Commission will take a short recess.

(Short recess)

COLONEL CHASE: The Commission will be in session.

CAPTAIN ROWE: Let the record show all members of the Commission are present, the Accused, together with his duly appointed and chosen counsel, together with the Japanese interpreter of his choice, is present, and the Prosecution is ready to proceed.

CAPTAIN ROWE: Will you read back the last question.

(Question read back.)

Q Miss Torres, let us come back to the house where you and your sister and mother were before your mother was killed. Your mother was taken out somewhere. Simo told you that he saw your mother killed.

A Yes, sir.

Q Then, two soldiers took you and your sister outside, is that correct?

A Yes, sir.

Q Who gave the soldiers that order?

A Naito.

Q What did you hear Naito say?

A "Kill them".

Q You heard him say that?

A Yes, sir.

Q To the two soldiers?

A Yes, sir.

Q When you and your sister were taken outside, you saw your sister struck with a bayonet?

A Yes, sir.

Q And she screamed?

A Yes, sir.

Q Can you describe how Naito was dressed?

A (Through Interpreter) He was dressed in navy blue with boots.

Q What kind of hat?

A Japanese hat.

CAPTAIN ROWE: Let the record show that the witness indicated with her hands a hat with a pointed front. At this point, if the Commission please, the Prosecution requests that in the next few minutes, the Court be held in closed session in the presence of the Defense Counsel and the Prosecution so that the witness may exhibit scars of the

wounds to the Court.

COLONEL CHASE: The Commission will adjourn to the conference room accompanied by the Defense Counsel and Prosecutor, also by the young lady interpreter.

(Whereupon at 1015 hours, the members of the Commission, Prosecution and the Defense Counsel, the witness and the Visayan interpreter, Miss Zosa, adjourned to the Commission conference room for a closed session.)

Pursuant to adjournment at 1015 hours, the Commission convened at 1020 hours.

COLONEL CHASE: The Commission will be in session.

COLONEL CHASE: The record will show that during the adjournment the witness showed the Commission the scars which she said were the ones caused by the wounds which she has already described in her testimony.

CAPTAIN ROWE: No further questions. Your witness.

CROSS EXAMINATION

LIEUTENANT WATERS:

Q Miss Torres, did you attend school during this period the Japanese occupied Guiuga?

A No.

Q Do you speak Japanese?

A No.

Q Do you understand Japanese when it is spoken?

A Yes, sir.

Q You understand it fluently?

A Not very well, little.

Q You mean by that, you understand certain words in Japanese?

A Yes, sir.

Q Can you speak the words or pronounce the words that you understand in Japanese?

A No.

Q That is all.

REDIRECT EXAMINATION

CAPTAIN ROWE:

Q Miss Torres, when the Japanese occupied your section at Guianga, did they permit you to speak English?

A No.

Q What did they do?

A If they caught Filipino speaking English they would slap him or kick him or cut off his head.

Q And is that the way you learned certain Japanese expressions, to understand?

A Yes, sir.

CAPTAIN ROWE: No further questions.

EXAMINATION BY THE COMMISSION

COLONEL CHASE:

Q I would like to ask just one question to clear up an identification. Was Beatriz Torres your mother and Aurora your sister?

A Yes, sir.

Q Eugenio was your younger brother?

A Yes, sir.

COLONEL HITCHINGS:

Q How old was Aurora?

A She was 19.

Q Who was it that stabbed you with the bayonet?

A The Japanese who Naito ordered.

Q What was his name?

A Japanese. I do not know him -- the soldier.

Q Just what was that order that Naito said when he ordered the Japanese to stabb[illegible] you?

A He told, "Kill them."

Q Was that before the Japanese took you out and told you he was taking you to the Kempei Tai?

A Yes, sir.

Q At the time he stabbed you, who was present there? Was there anyone else present besides you and the Japanese?

A Nobody.

Q Did you see Aurora? What happened to her when the Japanese stabbed Aurora, did she fall down?

A No.

Q Did you see her killed?

A I saw her as she was stabbed.

Q Did you ever see her again?

A No more.

Q Have you ever seen your mother again?

A No more.

COLONEL CHASE:

Q Have you ever talked with anyone who saw their bodies after they were dead?

(Witness could not understand the question and a conversation ensued between the Filipino interpreters and the Witness with the former explaining to the latter the question asked by Colonel Chase.)

A Yes, sir.

Q Tell the Commission who they were, who those people were, and what they told you.

A His name is Susimo Companiedo.

Q You have testified that this man told you that your mother was dead. Tell the Commission what else he told you.

A He told me that he had seen the actual killing. He saw Naito cut the head of my mother and after cutting when my mother fell down, he strike the back, and later, two boys were being shoot. That was my brother and the other men.

Q Have you ever talked to anyone who saw your sister after she was dead?

(The witness being unable to understand the question, a conversation ensued between the witness and the Filipino interpreters with the latter explaining the question to the former.)

A There was none.

CAPTAIN ELLINGSON:

Q What language did Naito use when he spoke to your Sister and to your mother?

A Spanish -- Davao Spanish.

Q He spoke Spanish to you? What language did he use when he spoke to the soldiers?

A Japanese.

Q You stated the Japanese soldiers who stabbed you said he was taking you to the Military Police. What language did he use?

A Nippongo -- Japanese.

Q Were any of the Japanese present, officers?

A No.

CAPTAIN ELLINGSON: No further questions.

COLONEL CHASE: Any questions by the Defense?

LIEUTENANT WATERS: Yes, sir. For the purpose of straightening all this so that all may understand, we would like to conduct, with leave of the Commission, an experiment with the Japanese interpreter to help us clarify whether or not she understands Japanese.

COLONEL CHASE: Please go a little into detail as to what you intend to do.

LIEUTENANT WATERS: We would like to ask leave of the Commission, Prosecution, for the purpose of explaining the point of our experiment.

(Whereupon there followed an informal off the record discussion by the Commission, Prosecution, and Defense, wherein the Defense explained the purpose and means of conducting its experiment.)

COLONEL CHASE: It is my ruling as law member that it will be a reasonable procedure for the Defense to follow, testing the credibility of witness' testimony as to the words alleged to have been spoken by the witness. You may proceed.

CAPTAIN ROWE: I do not intend to interfere with the experiment but I would like to know the words prior to their being said. Such an experiment is not proper cross-examination.

LIEUTENANT WATERS: We have anticipated that, sir.

COLONEL CHASE: I feel sure the Defense will agree to permit the Prosecution to hear the words which the Interpreter is to say.

CAPTAIN ROWE: Allow me to ask one more question of the witness at this time.

COLONEL CHASE: You may do so.

Q (By Captain Rowe) Did you go to school to study Japanese?

A No.

CAPTAIN ROWE: There is a matter for the official record, a statement by the Japanese interpreter. Will you make the same statement you made for me.

LIEUTENANT McCULLOUGH: May this be donw without the presence of the witness; otherwise, the experiment will fail.

COLONEL CHASE: Yes, will you take her outside a moment. (Speaking to the interpreter, Miss Zosa, who took the witness from the room.)

CAPTAIN ROWE: Please tell the Commission what you have just told me.

INTERPRETER BABA: There is more than one way of saying in Japanese the English word the person may have used. The person may have used the more technical, more then the military use, all the time may have used the ordinary spoken language which would mean the same but simpler way of just saying it.

COLONEL CHASE: How many words do you have on the list?

LIEUTENANT WATERS: Three words.

COLONEL CHASE: The record will show that during an informal conference with the Prosecution and Defense, it was agreed that the three terse expressions submitted by the Defense will each be expressed in Japanese by the interpreter in several different ways, following which this will again be submitted to the Prosecution and the Defense before the witness is recalled.

CAPTAIN ROWE: There is a qualification in this

experiment which the Commission is putting through for the benefit of the Defense, and that is, the girl is not educated in Japanese. The expressions in Japanese, the intonations, they make a great difference between the expression and what is intended to be said. And since the Accused is not going to make this statement himself in Japanese, the witness here had been trained to hear the Accused, cannot be held responsible for what she said in connection with this.

COLONEL CHASE: The question of the weight to be given the result of the experiment lies with the Commission.

CAPTAIN ROWE: Yes, sir.

COLONEL CHASE: The Commission will take a short recess to permit the interpreter to translate the expressions.

(Short recess)

COLONEL CHASE: The Commission will be in session.

CAPTAIN ROWE: The Commission is present, the Accused is present with his duly appointed Defense Counsel and counsel of his choice and the Japanese interpreter, and the Prosecution is ready to proceed. At this point, I would like to bring up argument on this experiment. I object to the experiment being taken on the ground that it is immaterial, irrelevant, and incompetent. The basis for this is that we are not getting the actual expressions of the Accused himself. Secondly, the Accused is not a pure Japanese. He is a Japanese mestizo. The Accused spoke two languages, Japanese and Davao Spanish. We do not know whether these expressions in this experiment are intended to bring out true Japanese or whether he expressed the statement in pure Japanese or slang. Slang is not a language. As expressed by the Japanese

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interpreter, there is no one clear way of expressing a word or phrase in Japanese. Third: She was a young girl at that time, probably 15 years of age. In the course of emotional excitement they understood slang expressions. She knew Naito's voice; she can understand Naito's voice. Why cannot we have Naito's voice now as long as it is the experiment. We are not in anyway harming the rights of the Accused; it will be his experiment; it is his desire. I am willing to go along if he will give the expressions himself.

COLONEL CHASE: Does the Defense wish to comment on the Prosecution's position in this matter?

LIEUTENANT WATERS: May it please the Commission, the Defense has this to say: First, in regards to the Accused not being pure Japanese, we might call to the attention of the Prosecution that the Japanese interpreters authorized to be used before this Commission are not pure Japanese either. Secondly, there is no clear way to express certain words in the Japanese language. We say this, that if the witness put on by the Prosecution could have understood the phrases that she says were used at the time testified to and translate them into English, then she can now recognize those terms, phrases or expressions if she again hears them. Third, as to the difference in voices being spoken this time by an Interpreter and at the time by the Accused, Naito, the Defense has this to say: That we agree to allow Naito to use the expressions for the purpose of the Witness' identification. Under the supervision of the authorized Japanese interpreters or translators for this Court so that there will be no misunderstanding or no change of the expressions used.

COLONEL CHASE: It is the opinion of the law member that the Defense has a clear right on cross-examination to test the credibility of the testimony of the witness in this respect. However, the test may be conducted, the final decision as to the probative value of the outcome of the test, of course, lies with the Commission. On that basis, we will accept the agreement of the Prosecution and the Defense to have the phrases prepared by an American interpreter read and spoken in Japanese by the Accused as a satisfactory procedure. I want the Accused to speak each of the three phrases separately and slowly. I will caution the witness, Virginia Torres, not to attempt to identify them at that time. Then, he will again speak the same expressions slowly at which time the witness will have an opportunity to state whether she recognizes any of the expressions spoken, and if so, what she takes them to mean. Call the young lady back.

CAPTAIN ROWE: You are still under oath, you will tell the truth, do you understand?

(Through Interpreter Zose) Yes, sir.

LIEUTENANT WATERS: If the Commission please, it will take a few moments for the interpreters to translate these phrases into Japanese characters.

COLONEL CHASE: In the meantime, one member of the Commission wishes to ask a question.

COLONEL HITCHINGS: You have testified that you heard the soldier say certain things in Japanese, now I want you to give us as nearly as possible the way that Japanese sounded even if it is not exact. I want you to say it as nearly as possible as you can.

COLONEL CHASE: I believe the member intended to say the Accused rather than the Japanese soldier. I don't think she testified she heard the soldier say the certain words.

COLONEL HITCHINGS: Well, the Accused is not a Japanese soldier. I want you to give the sound of what you heard the Accused or any of other Japanese soldier say at that time. I want you to give the sound of these Japanese phrases to the Commission as nearly as you can do so. Surely, you can, to some extent, if you could understand. You can say something that sounded like that, can you not?

A No. I understand because Naito was talking to the Japanese to take us away. That is all I know, by the acts, I know that he ordered the soldiers to take us away.

COLONEL HITCHINGS: Try to remember how that sounded in Japanese. Surely, you can give us something like what is sounded, can you not?

CAPTAIN ROWE: I must take an objection. I think it is unfair to test the witness to give a sound when we are trying to express a language. It is a difficult thing, I imagine, to get over to the witness.

COLONEL HITCHINGS: My question is perfectly clear, above-board. I want, nearly as possible, a reproduction of the Japanese she heard. We understand she does not

speak Japanese but she certainly can give something approximate. If she can understand she certainly can give something to approximate it. Can you not give us nearly as you can what you heard the soldiers or what you heard the Accused say in Japanese at that time?

A (By the witness) I cannot give.

COLONEL CHASE: Let the record show that the witness apparently was unable to recall the sound of the phrases.

CAPTAIN ELLINGSON: You state that on the morning of the first occasion that Naito came to your house and took you to the school house that morning. After you were arrested you were questioned, who questioned you?

A The Kempei.

Q (By Captain Ellingson) Did a member of the Kempei act as an interpreter or did Naito act as interpreter?

A Naito was not there.

Q He was not there?

A Yes, sir.

Q He didn't ask the question, well who did?

A The civilian interpreter.

Q In what language?

A There was a Japanese that could speak a little Visayan. He was born in Davao and could speak Davao and English and gone to school in Davao High and speaks different kind of languages.

Q Did Naito ever act as an interpreter for the Kempei Tai?

A He was but he did not.

Q Did he act as an interpreter at the time he came to

your house?

A Yes, he did.

Q Did he act as an interpreter or as a commander. Did he command the Japanese soldiers? Did he interpret their order from Japanese into Davao and Spanish so you and your family might understand it?

A He is commanding.

COLONEL CHASE: Does the interpreter have the test phrases in Japanese characters now?

LIEUTENANT WATERS: Yes, sir.

COLONEL CHASE (to the witness, Miss Torres): We are going to have Naito say certain phrases in Japanese. First, I will have him say them once slowly and you need not say anything. Then he will say them over again slowly and if you recognize any of these Japanese words as he speaks them you stop him and tell us what you think they are.

(Whereupon, Interpreter Zosa repeated the question in Visayan to the witness.)

COLONEL CHASE (to the Accused, through Interpreter): One of the interpreters translated the list of words which you have been given. You will read the expressions for the first time over very slowly. You will then read the same expression over very slowly again.

LIEUTENANT WATERS: These phrases are listed as numbers 1, 2 and 3. For two of the three test phrases there are three different Japanese translations of the English equivalent. I would like to suggest to the Court that I state for him to read one of the three phrases under the heading, so that the Reporter can show what was read. I will ask the Accused to stand and read the three phrases under

title 1.

COLONEL CHASE: Remember to speak loudly and slowly.

(Whereupon the Accused stood up and read the subject phrases in Japanese.)

LIEUTENANT WATERS: That was the three phrases under No. 1.

COLONEL CHASE: Have him say once again very slowly the expressions under No. 1. Will you tell us at this time now if you understand them and if so, what do you think they mean.

(Whereupon Interpreter Zosa repeats question to the witness.)

LIEUTENANT WATERS: We would like to ask the witness if she now fully understands what she is to do after it having been explained to her.

COLONEL CHASE: Do you understand what you are going to do?

A (Through Interpreter Zosa) Yes, sir.

(Whereupon, the three Japanese expressions were repeated by the Defendant.)

A (By witness) I don't understand.

COLONEL CHASE: Proceed with any one of the other expressions you wish to pick out. Let the record show that the witness apparently did not understand any of the expressions spoken in Japanese by the Accused.

(At this time another phrase was said by the Accused.)

COLONEL CHASE: Was that only a single expression in Japanese?

LIEUTENANT WATERS: Yes. That completes No. 2. We will now have No. 3 repeated in three different forms.

(Whereupon the Accused pronounced the expressions in three different forms.)

COLONEL CHASE: (speaking to witness) Listen carefully. Have him speak each one of the phrases for No. 3 very slowly, but only once.

(Whereupon, the Accused said the list of phrases in three different forms.)

A (Witness) I don't understand.

LIEUTENANT WATERS: Shall I read them for the purpose of getting them into the record?

CAPTAIN ROWE: Wait a minute, if the Commission please, I would like the men be required to make the expressions, say the expressions in the same manner that he said them on the day she heard the way he ordered his men to do these things.

COLONEL CHASE: I think the suggestion of the Prosecution is definitely out of order because if you give him any such order you are in effect ordering him to plead guilty.

CAPTAIN ROWE: Then, again, I must say the experiment is immaterial, irrelevant and incompetent at this time because we are not getting the true expressions of the Accused. Now, we are going half way in this job; we might as well go the full way. If the Defense made that request he should go through with the whole experiment; half is as good as none. It is an unfair test to the witness here

when the Japanese interpreter stated that expressions are the important thing. In the Japanese language, it is not the word. It is the expression.

COLONLL CHASE: It is utterly out of the question for the Commission to order the Accused to admit that he did the things charged by using the same tone in which he ordered the decedents to be killed. Under no circumstances can the Court entertain such a request. The original plan of the Court and proposal of the Defense was to have the official interpreter speak the words. At the request of the Prosecution the Accused agreed to speak them. I do not believe the Commission can go farther than that.

CAPTAIN ROWE: I will withdraw that part, which is incriminating by itself. I realize that as Prosecutor, Defense and Commission, we must protect his rights, whatever rights he has under International law.

COLONEL CHASE: As far as the result of the test is concerned, its probative value is for the Commission to determine in connection with consideration of all the evidence in the case.

CAPTAIN ROWE: Thank you, sir. Are there any other questions with the witness?

LIEUTENANT WATERS: We are about to read into the record the phrases and the order in which they were given. I want the official interpreter to look over my shoulder and verify what I am reading. The first phrase that was read was "kill them"; the second phrase that was read was "get the rope"; the third phrase that was read was "release them". For the first phrase that was used "kill them" there were

three Japanese equivalents given. There was one Japanese phrase for "get the rope" and there were three Japanese phrases given as "release them", is that correct?

INTERPRETER USHIJIMA: That is correct.

LIEUTENANT WATERS: If the Commission please, we would like to ask the witness one or two more questions at this time.

COLONEL CHASE: You may proceed.

Q (by Lieutenant Waters) Miss Torres, I believe you said in your original testimony that Naito spoke Spanish, is that correct?

A Yes, he spoke Spanish.

Q And that on occasions he did speak Spanish in your presence and hearing?

CAPTAIN ROWE: One minute, if the Commission please, what is the Defense trying to get at; I am willing to cooperate, but now he is going into a Spanish vein here. I don't know what he is talking about. I have to object on the ground it is incompetent, irrelevant, and immaterial.

COLONEL CHASE: I believe under the directive of 5 December that it is within the functions of the Commission to require counsel to make an offer of proof. In order to clear this point I suggest that at this time the Defense tell the Commission just what he is trying to bring out.

LIEUTENANT WATERS: If the Commission please, in the direct testimony of the witness, Miss Torres, she stated that Naito, the Accused, spoke Japanese, also spoke Spanish, and on occasion did speak in one or other of those two languages. For the purpose of testing the credibility

of the witness, which, as Defense Counsel, I do not think is irrelevant, immaterial and of no consequence. We would like to go into these matters farther since she has testified as to certain translations as she understood them when the Accused was speaking in Japanese or in Spanish. We wish to test the witness to show whether or not she did understand these languages and did understand what the Defendant said and what the Accused meant at the time he spoke as she said in such a language.

COLONEL CHASE: In view of the explanation, the objection is over-ruled. You may continue.

CAPTAIN ROWE: On a point of argument on that, the Defense did not accurately state what their desire was because the record does not show that he spoke Spanish.

COLONEL CHASE: It is pretty clear to the law member ---

CAPTAIN ROWE: When he mentioned the word Spanish, it is Davao Spanish. That is different than Spanish.

COLONEL CHASE: There was no testimony in the record as to how Davao Spanish differs from other Spanish. We will let the Defense proceed with this line of questioning.

CAPTAIN ROWE: If the Commission will give me its indulgence on these circumstances, I think it is putting the witness to an unfair test. It is putting the witness to an educational training instead of an actual training in developing facts in the case.

COLONEL CHASE: Your objection is over-ruled. You may proceed.

LIEUTENANT WATERS: Will you read the last question back?

(Question read back)

CAPTAIN ROWE: Let's go back to the original record and see what she did testify to. Pure Spanish, or Davao Spanish.

CAPTAIN ELLINGSON: She testified she spoke Davao Spanish - - -

COLONEL CHASE: The Defense will repeat the question slowly and make it short as possible and see if she gets it this time.

CAPTAIN ROWE: If the Commission please, I would like to have the Visayan interpreter explain to the witness what this is all about in Visayan.

COLONEL CHASE: I intended to have the question repeated and then have the Interpreter repeat it to the witness.

CAPTAIN ROWE: Just try it with the question what this is all about; in other words, explain the whole argument.

COLONEL CHASE: It seems to me, at this point, we are wasting a lot of time. The question was a very simple one. "Did you testify previously that this Accused spoke Davao Spanish?" Nothing could be simpler. Let us proceed and get an answer to the question.

Q (By Lieutenant Waters) Miss Torres, did you testify previously to this that the Accused, Naito, spoke Davao Spanish?

COLONEL CHASE: The Interpreter will repeat the question to the witness.

(Whereupon the Interpreter repeated the question to the witness.)

LIEUTENANT WATERS: We would like to have the translation of the talk between the witness and the interpreter, if the Commission please.

A (Through Interpreter) He speaks Davao Spanish, but now he is saying one dialect of language. Naito speaks Davao Spanish but when he gave the order he said it in Nippongo.

INTERPRETER ZOSA: That is Japanese language.

COLONEL CHASE: What was the language?

INTERPRETER ZOSA: Nippongo, Japanese language.

LIEUTENANT WATERS: If the Commission please, I don't believe that is the answer to the last question which was asked by the Defense Counsel. I would like to request the Court Reporter to read the question and the answer to it.

COLONEL CHASE: I think the answer was responsive to the question. The Reporter will read the question and answer back.

(Question and answer read back)

COLONEL CHASE: The Court will take judicial notice that Nippongo has reference to the Japanese language.

Q (By Lieutenant Waters) Miss Torres, do you understand Davao Spanish?

A A little.

LIEUTENANT WATERS: That is all.

COLONEL CHASE: Any further questions from the Prosecution?

Q (By Captain Rowe) Miss Torres, you heard the Accused

make certain expressions in Japanese, is that right?

(Question repeated by the Interpreter)

CAPTAIN ROWE: I withdrew the question.

Q You heard Naito say something a little while ago, is that correct?

(Question repeated by the Interpreter)

A Yes.

Q Now, how did Naito order these soldiers to take out you and your sister, was it in the same voice or louder?

A A little bit louder.

Q Give the expression how loud.

LIEUTENANT WATERS: If the Commission please, that is purely opinion on the part of the witness and as to whether or not - -

COLONEL CHASE: He asked the witness to illustrate the manner and the tone in which the expression was used. The objection is over-ruled.

LIEUTENANT WATERS: Exception.

Q (By Captain Rowe) Miss Torres, give the Commission an idea of how loud Naito gave the order to take you and your sister out; did he say it quietly?

A He said loudly. He was giving command.

Q Was it with force?

A His voice was loud.

CAPTAIN ROWE: No further questions.

COLONEL CHASE: Any further questions by the Defense?

LIEUTENANT WATERS: That is all.

COLONEL CHASE: The witness may be excused.

(Witness excused)

COLONEL CHASE: The Commission will recess and meet at 1330 hours.

(Whereupon, the Commission recessed at 1130 hours.)

Pursuant to adjournment at 1130 hours, the Commission convened at 1330 hours.

COLONEL CHASE: The Commission will be in session.

CAPTAIN ROWE: The Commission is all present; the Accused is present with his duly appointed Defense Counsel and counsel of his choice, and, personal Japanese interpreter; the Prosecution is ready to proceed.

COLONEL CHASE: You may proceed.

CAPTAIN ROWE: I will call as my next witness, Susimo Companiedo.

SUSIMO COMPANIADO

called as a witness on behalf of the Prosecution, being first duly sworn, was examined and testified as follows, through the official Court Interpreter.

DIRECT EXAMINATION

CAPTAIN ROWE:

Q What is your name?

A Susimo Companiedo.

Q Where do you live?

A Biao, Guianga.

Q Do you know the Accused in this case?

A Yes, I know.

Q What is his name?

A Naito.

Q Do you see him in the Court?

A Yes, I see.

Q Will you point him out?

(Witness pointed to the Accused.)

CAPTAIN ROWE: Let the record show that the witness pointed to the Accused in this case.

Q (By Captain Rowe) Do you remember May 5, 1945?

A Yes, I remember.

Q Will you explain what happened and what you saw on May 5, 1945?

A On May 5, 1945, at 3 o'clock on Saturday I was gathering bananas.

COLONEL HITCHINGS: What was the last part of the answer, please?

(Whereupon, the Reporter read the answer.)

WITNESS (continuing): I heard shouting and so I approached the direction.

COLONEL HITCHINGS: So I approached what?

REPORTER: "So I approached the direction."

WITNESS (continuing): I saw Mrs. Torres being beheaded with a sword and then she was stabbed in the back. Eugenio and Amador were shot - - -

COLONEL HITCHINGS: What was that?

INTERPRETER ZOSA: Eugenio.

A (Witness continuing) w - were shot by the two Japanese soldiers, then I went back home.

Q (By Captain Rowe) Did you see Naito, the Accused in this case, stab Mrs. Torres?

LIEUTENANT WATERS: If the Commission please, we object to that question. It is a leading question.

COLONEL CHASE: I think Counsel had better

rephrase his question.

CAPTAIN ROWE: I withdrew the question.

Q (By Captain Rowe) Explain just how you saw Naito, the Accused, act?

LIEUTENANT WATERS: We object to that question. It is also a leading question and is prejudicial to the right of the Defendant in this case.

COLONEL CHASE: No, I think the question is not leading.

LIEUTENANT WATERS: Exception, please.

CAPTAIN ROWE: Read the last question back, please.

(Question read back)

LIEUTENANT WATERS: I would like to add to our objection, if the Commission please, such a fact is not in evidence. The Defendant was not placed in sight or view of the witness who is testifying and therefore it is assuming a fact; therefore, an improper question.

COLONEL CHASE: The witness testified he saw the Accused at the time and the question now in substance is, "What did you see him do at that time?" It seems to me the question is sufficiently general in scope and the witness may answer it.

LIEUTENANT WATERS: Exception.

A (Witness continuing) His head -- he struck Mrs. Torres' back with a saber and then her back was stabbed by bayonet.

INTERPRETER ZOSA: "He struck Mrs. Torres by the back of his neck and struck his bayonet into the back."

COLONEL HITCHINGS: Can I have the question and answer read back?

(Question and answer read back)

CAPTAIN ROWE: In order to make that clear, let the record show that "his" refers to Mrs. Torres. It is a colloquial expression here.

COLONEL CHASE: Suppose you ask the question to have the witness state by name the person to whom he refers.

CAPTAIN ROWE: I withdrew that question and will rephrase it.

Q (By Captain Rowe) Who did you see strike Mrs. Torres in the back of the neck?

A Naito.

Q How did Naito strike Mrs. Torres?

(Whereupon, the witness indicated the method of striking by motioning.)

CAPTAIN ROWE: Let the record show that the witness showed that Naito struck Mrs. Torres in the back of the neck by showing with his hand the method by which she was struck and also the thrust that was done by Naito with the bayonet into Mrs. Torres' back.

COLONEL CHASE: You haven't got the answer from the witness to the last question.

CAPTAIN ROWE: I withdraw that last part, withdraw the part about the thrust.

A (Witness) Naito held the sword this way (indicating) and struck Mrs. Torres at the back of her neck and as she fell Naito thrust his bayonet at Mrs. Torres' back.

COLONEL CHASE: At the same time, the witness made a sign with his hands a sweeping motion as if he was holding a sword in both hands and at the same time he indicated with

both of his hands a thrusting motion.

Q (By Captain Rowe) How long do you know Naito?

A Three years.

Q Is the Accused the same Naito who you saw strike Mrs. Torres?

A He is the one.

Q Where did this take place?

A Biso, Guianga.

CAPTAIN ROWE: No further questions.

Q (By Colonel Chase) Do you know the first name of Mrs. Torres whom you mentioned?

A Beatriz Torres.

Q Was she the mother of Virginia Torres?

A Yes.

CROSS EXAMINATION

LIEUTENANT WATERS:

Q How far were you from this screaming when you first heard it?

A 50 meters.

Q And how close to the scene did you approach after you heard the shouting or screaming?

A I was only 50 meters away. I did not move.

Q Did you not state in your previous testimony that you heard shouting and approached it?

A I walked only after finding that Mrs. Torres was already killed.

Q Did you walk toward her or away at that time?

A I went back to my house.

COLONEL CHASE: I think that answer wasn't

entirely clear. Repeat the question please and get a correct answer.

(Question read back)

A I went back home --- I did not go to the place where Mrs. Torres was executed but I went back to my house.

Q When you went to your house were you moving away from the scene of the execution?

A Farther away.

Q Did this take place on a hill, known as "Abaca Hill"?

A Near the bushes -- in the bushes around the high grass.

Q How high or how tall is this high grass that you referred to?

CAPTAIN ROWE: He referred to them as "bushes".

LIEUTENANT WATERS: I will rephrase the question. How high were these bushes and tall grass that you referred to?

A They were taller than my height.

Q Were you in such a position that the Japanese could see you?

A I was hiding behind the bushes.

Q How thick are the bushes in that locality?

A Very thick.

Q Are they planted or do they grow naturally?

A The bushes grew by themselves alone; the bushes grew wild.

Q Approximately to the best of your ability, how large around would you estimate these bushes to be?

A They were wide -- wide.

Q What kind of bushes were they?

A I do not know.

Q Are they bushes that grow close to the ground or is there a space between them and the ground?

A Yes, they grow with a distance.

Q How much distance is there between the lower foliage on these bushes and the ground?

A Within this distance.

LIEUTENANT WATERS: Say about one foot.

COLONEL CHASE: Let the record show the witness indicated a distance about 2 feet above the floor.

LIEUTENANT WATERS: I would say about one foot, sir. I will ask him to demonstrate again.

COLONEL CHASE: Will it be satisfactory to the Defense to state that the witness indicated a height with his hand a height more than one foot from the floor?

LIEUTENANT WATERS: It will be satisfactory, sir.

Q (By Lieutenant Waters) Is the ground there flat or hilly?

A It is level.

Q Do you know where the house of the Torres family was situated at that time?

A I know.

Q Do you know where the house of Naito was at that time?

A I know.

Q Now in this spot that you referred to as the execution, how far was that from the Torres house?

A Very far.

Q Approximately how far?

A About 400 meters.

Q In reference to where the execution took place, was the house of Naito on the other side of where the Torres house was or on that side near the Torres house?

CAPTAIN ROWE: I think that is a rather confusing question to give the witness.

COLONEL CHASE: See if you can rephrase the question.

Q (By Lieutenant Waters) In reference to the locations of the Torres house and the Naito house, where did the execution take place?

A Nearer Mrs. Torres' house.

Q Did it take place between the houses of Naito and Mrs. Torres?

A This is Mrs. Torres' house (indicating). This is Naito's house (indicating) and the place of execution was here (indicating).

COLONEL CHASE: The record will show that the witness diagramed with his fingers on the floor a position of the execution which lay on the side of the Torres house away from the Naito house. Is that an accurate description?

LILUTENANT WATERS: That is sufficient.

CAPTAIN ROWE: Just add to that that the Torres house was in between Naito's house and the point of execution.

COLONEL CHASE: That is an excellent way of stating it.

Q (By Lieutenant Waters) How many people were present in the execution of Mrs. Torres?

A Three.

Q Who were the three people that were present?

A It was only Naito whom I know. The rest I don't know.

Q Were they Japanese soldiers or other civilians?

(The witness, at this time, pointed to the Accused.)

CAPTAIN ROWE: Let the record show that the witness pointed to Naito in this case.

A Three of them, two Japanese soldiers and Naito.

COLONEL CHASE: Read back the last two questions and answers, please.

(Questions and answers read back)

COLONEL CHASE: You may proceed.

Q (By Lieutenant Waters) Did you see Eugenio and Amador Torres shot?

A Yes, I saw.

COLONEL CHASE: I believe that the witness in his previous testimony testified to the fact that he knew the person only by the name of Amador and did not know his last name.

CAPTAIN ROWE: In order to clarify the record I suggest the Defense ask the full name.

Q (By Lieutenant Waters) Do you know the full name of Amador?

A Only the first name.

Q Do you know the full name of Eugenio?

A I know.

Q What is it?

A Eugenio Torres.

Q Did you see who shot them?

A Yes, I saw.

Q Will you state to the best of your ability if you know the names and so forth?

A I do not know.

CAPTAIN ROWE: That requires clarification.

LIEUTENANT WATERS: We don't think, if the Commission please, that it is proper for the Prosecution to clarify the answer of the witness he placed on the stand to a question testing his credibility. And now he wants to clarify. That is an improper procedure.

COLONEL CHASE: I think the Commission will straighten out any apparent confusion if the Defense doesn't. I believe it is better to have the Defense go ahead without further interruption.

CAPTAIN ROWE: In this case, the Prosecution will object because it was already answered.

LIEUTENANT WATERS: I do not get the objection.

CAPTAIN ROWE: The question was already answered.

Q (By Lieutenant Waters) How far from where Mrs. Torres was executed were these two boys shot?

A They were very near each ther.

Q Approximately how far in meters?

A Four meters.

Q Which took place first, the execution of Mrs. Torres or the shooting of these two boys?

A Mrs. Torres was the first one.

Q And then who was shot first, Eugenio or Amador?

A It was Eugenio.

Q How much time elapsed between the execution of Mrs. Torres and the shooting of Eugenio?

A Half an hour.

Q How much time elapsed between the shooting of Eugenio and the shooting of Andor?

A Half an hour, too.

Q Who had the saber with which Mrs. Torres was beheaded?

A Naito.

Q How large a saber was it?

A As long as this (indicating).

COLONEL CHASE: Indicating with his hands a length of about two and a half feet.

Q (By Lieutenant Waters) Was the blade of this saber straight or curved.

A It is curving.

Q What kind of a handle did the saber have?

A The handle has a cover and it is long - - the handle has a cover - - the handle was long and it has cover.

Q What kind of a cover?

A Made of iron.

Q Did the saber have a steel blade?

A Yes, it is made of steel.

Q Was the blade engraved?

A No.

Q You are sure it was not engraved?

(Question repeated by interpreter)

A Yes, I am sure of it.

LIEUTENANT WATERS: That is all.

CAPTAIN ROWE: No further questions by the Prosecution.

EXAMINATION BY THE COMMISSION

COLONEL HITCHINGS:

Q You stated that you saw Amador and Eugenio Torres shot, was that Eugenio Torres?

A Yes.

Q Were they shot to death?

A Yes.

Q How did you know they were killed?

A Because they fell to the ground.

Q Did you ever see their bodies again?

A No more.

Q How long did you see them lie still on the ground?

A I saw them at the time they were shot.

Q Did you ever see them alive again?

A No, they were dead.

Q Do you live in the same village in which they live?

A Yes.

Q Was Mrs. Torres' head cut completely off?

A No.

Q How do you know she was killed?

A She fell to the ground.

Q Did you go to the bodies after the execution?

A No, I went back to my house.

Q Did you ever see Mrs. Torres or her dead body after that again?

A No more.

Q Did you see anyone injure Aurora Torres?

A No.

Q Amador, the man Amador, was he a Filipino citizen?

A He was a Filipino but he was an Ilocano.

CAPTAIN ROWE: How do you spell that?

INTERPRETER: I-l-o-c-a-n-o.

CAPTAIN ELLINGSON:

Q Were Eugenio and Amador executed at the same spot?

A Yes.

Q How far apart did their bodies lie?

A Four meters apart.

Q Was Amador present when Eugenio was killed?

A Yes, he was there.

Q What did they do with Amador during the 30 minutes after Eugenio was killed?.

A He was also shot.

Q Did you not state a moment ago that 30 minutes elapsed between the time that Eugenio was shot and Amador was shot?

A Yes.

Q What happened during these 30 minutes?

A His hands were tied.

Q Whose hands were tied?

A Amador.

Q Were Amador's hands tied at the time Eugenio was shot?

A No.

Q Then Amador's hands were tied at the time Eugenio was shot?

A Amador's hands were tied for 30 minutes.

Q Then what happened during the 30 minutes when Amador's hands were tied after Eugenio had been shot?

A The Japanese were just conversing with each other.

COLONEL HITCHINGS: I request that we get the

translation of this discussion between the interpreter and the witness. In other words, any discrepancy may be straightened out and I think should be brought up before the Commission.

COLONEL CHASE: Please try to avoid this extended discussion. If the witness does not understand the question, inform the Commission and a new question will be asked. But these long discussions with only 3 or 4 word answers, the Commission does not understand them.

Q (By Captain Ellingson) Virginia Torres testified the two shots, the only two shots that she heard that afternoon were very close together. Could these have been the shots that killed Eugenio and Amador?

A Yes.

Q But you have testified that it was 30 minutes between - - strike that - - You have testified that 30 minutes passed after Eugenio was killed before Amador was shot?

A Yes, I say that.

Q Who is correct, you or Virginia?

COLONEL CHASE: I think perhaps the question is getting outside the bounds of propriety. The witness obviously is not in a position to answer for another whether he is correct or not. You may bring out the discrepancies, but I think it is improper to ask the witness for an opinion in regard to this.

CAPTAIN ROWE: I believe that Virginia testified she heard two shots.

CAPTAIN ELLINGSON: She testified she heard two shots.

CAPTAIN ROWE: I want the record to show that the witness, Virginia, testified that she heard two shots but not close together.

COLONEL CHASE: I am not sure of that. The Court will recess while the Reporter looks up the specified testimony.

CAPTAIN ELLINGSON: I will withdrew the question.

COLONEL HITCHINGS:

Q Did you ever see Amador or his body again after that?

A No.

Q Did he live in the same village with you?

A Yes.

Q If he had lived you would have seen him again, would you not?

A Yes.

Q Did you talk to anyone who saw the bodies of any of these people after that?

A No.

Q Do you know how they were buried?

A No.

COLONEL CHASE: The Commission feels that there is a distinct gap which has never been closed between the probable time of death of the victims and what finally became of them. I would like to have the Prosecution recall Virginia Torres and see if she can clear up that point. Witness will be excused and the Court will recess for ten minutes.

(Short recess)

COLONEL CHASE: The Commission will be in session.

CAPTAIN ROWE: The Commission is all present, the Accused with his duly appointed Defense Counsel and Counsel of his choice and personal interpreter is present, the Prosecution is ready to proceed.

VIRGINIA TORRES

having been previously called as a witness on behalf of the Prosecution was recalled by the Prosecution and testified as follows: DIRECT EXAMINATION

CAPTAIN ROWE: I want to remind you that you are still under oath.

CAPTAIN ROWE:

Q Did you see your mother and your brother after they were taken away from the house?

A No more.

Q Did you ever hear from your mother or brother when they were taken away from the house?

A No.

Q Did you bury your mother or your brother?

A No.

Q Would there be any reason for them to come back to you if they were alive?

LIEUTENANT WATERS: I object, if the Commission please, it being a conclusion on the part of the witness.

COLONEL CHASE: I think the question is proper. Objection is over-ruled.

LIEUTENANT WATERS: Exception, please.

CAPTAIN ROWE: Do you understand the question? Read back the question.

(Question read back)

A Yes.

Q Give one reason.

A If they were alive, they were not killed, they should come back and, of course, it is my mother and my sister and brother -- they should -- she should come and see me.

Q About how old were you when your mother was taken away?

A I was 17.

Q Did your mother take care of you?

A Yes.

Q Did your mother allow you to go out alone at anytime?

A No.

Q Did she take care of you every night?

A Yes.

Q Did she protect you at all times?

A Always.

Q Would she be worried about you if you were not home?

A Yes.

CAPTAIN ROLL: No further questions. Your witness.

COLONEL CHASE: Do you know what became of the bodies of any of the persons concerning whom you testified this morning?

A No, I don't know.

COLONEL CHASE: The Commission has discussed the matter of the proof of corpus delicti during recess and is unanimously of the opinion that no legal proof of the death of any person has been brought before it. Accordingly, we have decided that the Court will be recessed for a sufficient period of time to enable the Prosecution to make a diligent

effort to secure additional witnesses having knowledge, either positive knowledge of the death of the persons mentioned in the Specifications or what may have become of the bodies. The Commission, therefore, at this time, unless the Prosecution or Defense has additional testimony to introduce, will recess to meet at the call of the President after the Prosecution has notified the President of the result of the attemp to locate such witnesses.

CAPTAIN ROWE: If the Commission please, it must realize that the corpus delicti is a very important fact. We haven't got a situation here similar to a domestic criminal act. We have a situation here of a war crime, a criminal act committed by a foreign country at war with the United States of America. The heads of the State, its constituents are responsible for the acts committed within the rules of war as laid down by the Rules of Land Warfare. We had a vicious enemy -- Japanese --

LIEUTENANT WATERS: I object.

COLONEL CHASE: Just a moment. We will give you a chance to be heard. Let him finish his statement.

CAPTAIN ROWE: The Japanese occupied this country. During that period in May 1945, a critical situation happened before the Japanese. The Americans landed. The Japanese were being driven into the hills. Is there any person, knowing the viciousness of the Japanese who would come out in the open, observe a crime. Would the Japanese soldiers permit a civilian or a Filipino or an American or anyone in sympathy with the Americans to see them murder a man?

Next point, Gentlemen. You heard the testimony on the stand of an eyewitness. He saw the Defendant deliberately thrust a saber into the back of a person, a human being, identified the person by name, knew the Accused, knew the person lived in the same community, and actually saw the person stabbed. Along with that, two other people were murdered by shooting. Gentlemen, is that man with the Japanese over there, going to remain when he knew that if they observed him, his life wasn't worth the shoe he is walking in. The United States Government is just fortunate that we can find two witnesses to bring that vicious crime before this Commission and have the facts presented. What logical conclusion can a person come to, remembering, that in this state of war we haven't got the district attorneys, we haven't got a police force, we had soldiers and the result of crime can only be developed long after the crime was committed.

The person fell down. The person is the murdered mother of this girl. This girl was closely watched by her mother. We have Filipino customs here which we have to take judicial notice of. One of those customs is the extreme value placed upon young girls, and the girl testified that nobody would ever leave the house especially during the occupation of the Japanese. How else can further witnesses be brought to see the vicious crime committed? How else can it be proved but have a logical deduction from the facts? The woman was hacked by the neck and at the same time the person fell, stabbed in the back viciously. In fact, the expression was given by the witness. What chance has a person, two people shot, hands tied, then Naito returned.

Did he return with them? No. Now, almost over a year has elapsed. They lived in Guianga. Their home was in Guianga. The mother never went out of Guianga.. She had her daughters. She has her other sisters. What logical conclusion can we come to, Gentlemen, outside of the fact that the person is dead. After all, our principles and moral codes are elastic. We are not tied down by principles of domestic criminal practice where you have to place the body before you. It is enough under the simple basic rules of law to show there was a person on which an attempt was made to kill him and all proofs established the fact that if that person were alive that person would be here. Finally, the Japanese were driven into the hills. What happened then? We have a crime. We have a war crime, a war crime against international justice. We must satisfy the Filipinos. They are our allies and we must satisfy the United States Government.

COLONEL CHASE: The Commission has carefully considered this matter and the Prosecution will note that this Accused is charged, in these words "willfully and unlawfully killed certain persons." The Commission believes, I think I can state from informal discussions, the Commission believes that the Accused has undoubtedly committed offenses against the laws of war but he is specifically charged with willfully and unlawfully killing certain people. No definite evidence to the effect that those people are dead has yet been brought before this Commission. True, the Commission might assume certain things, but it does not care to make such assumptions as long as there is any possibility of there being logical evidence. The Prosecution has stated in substantiation

of the presumption of their death that witnesses have testified they saw them attacked with weapons and fall. The young lady now on the stand was also attacked with weapons and fell and she is present in the court room this afternoon. The Commission is, therefore, very strongly of the opinion that it is unjustified in going ahead further with this case until the Prosecution has exhausted all possibilities of clearing up the point raised.

This is a barrio of some size. Undoubtedly, there are other residents of the barrio and of the neighborhood who are still alive. It seems highly improbable that the bodies of several people could vanish from the face of the earth with no one knowing anything about it. Testimony before many Commissions on the point raised by the Prosecution in these war crimes cases, I think rather tends to substantiate the opposite of the Prosecution's contention that the Japanese habitually removed the bodies. As a matter of fact, in similar cases, they almost always appear to have left them at the point where they were killed or in the immediate vicinity. Therefore, it seems profitless to continue arguing before the Commission in the matter. The Commission feels that a thorough investigation to attempt to substantiate definitely, the fact of the deaths of the persons or the fact that they are still alive be made; and under the directive of December 5, matters of this nature are distinctly delegated to the Commission to go as far as afield as is necessary to introduce new evidence which it considers to be material to the issue.

Does the Defense want to make any statement?

LIEUTENANT WATERS: I don't believe I have anything further to say. We are entirely in accord with the Commission.

COLONEL CHASE: The Commission will be in recess to meet at the call of the President and directs the Prosecution to attempt to secure evidence as to the final fate of the persons mentioned in the Specifications.

(Whereupon, at 1500 hours, the Court was adjourned to meet at the call of the President at a later date.)

Case: United States of America vs. Tetsuo Naito

Prosecution - Exhibit "A"

(Picture of Aurora Torres)

BEFORE THE
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

UNITED STATES OF AMERICA

-vs-

TETSUO NAITO

PUBLIC TRIAL

VOLUME II

Pages 79 to 168

DATE 28 March 1946

MANILA, P. I.

COPY NO. 2

AUTHENTICATION

THIS CERTIFIES that this Volume is part of the Official Record of the Proceedings of the Military Commission appointed by Paragraph 3 of Special Orders No. 60, Headquarters, United States Army Forces, Western Pacific, dated 13 March 1946; Paragraph 51 of Special Orders No. 61, Headquarters, United States Army Forces, Western Pacific, dated 14 March 1946, in the trial of the United States of America against Tetsuo Naito.

John A. Chase

JOHN A. CHASE
Lt. Colonel, (CMP) FA
President and Law Member
of Commission

BEFORE THE
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

* * * * * * * * * * * * * * * *

UNITED STATES OF AMERICA

-vs-

TETSUO NAITO

* * * * * * * * * * * * * * * *

PUBLIC TRIAL

Court No. 2-A
High Commissioner's Residence
Manila, P. I.
28 March 1946

Met, pursuant to adjournment, at 0830 hours.

MEMBERS OF THE MILITARY COMMISSION:

LT. COL. JOHN A. CHASE, (CMP) FA, President and Law Member

LT. COL. JOHN L. HITCHINGS, CAC
MAJOR HAROLD E. WARREN, CMP
CAPTAIN JACK ELLINGSON, CMP

APPEARANCES:

FOR THE PROSECUTION:

CAPTAIN SAMUEL ROWE, QMC, Prosecutor

FOR THE DEFENSE:

1ST LIEUTENANT CLARENCE L. WATERS, CMP, Chief Defense Counsel

2D LIEUTENANT JOHN E. McCULLOUGH, TC, Asst. Defense Counsel.

INTERPRETERS FOR THE COMMISSION:

LT. RAYMOND NIMURA
T/3 GEORGE S. BABA
T/4 GEORGE USHIJIMA
FILOMENA ZOSA
PANFILIO ALPUERTO
CAPTAIN JESUS LAGDAMEO, JR.
JOSE BATUCAN
PRAXEDIO VILLALUZ

OFFICIAL REPORTERS FOR THE COMMISSION:

JOHN L. BARBATO
WILLIAM E. RICE

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P R O C E E D I N G S

(Pursuant to adjournment the Commission convened at 0830 hours, 28 March 1946, at Court No. 2-A, High Commissioner's Residence, Manila, P.I.)

COLONEL CHASE: The Commission will be in session.

CAPTAIN ROWE: Let the record show that the Commission is present, the Accused with his Defense Counsel and duly appointed Defense Counsel of his own choice, and duly appointed Japanese interpreter of his own choice; and the Prosecution is ready to proceed.

COLONEL CHASE: You may proceed.

CAPTAIN ROWE: The Prosecution would like to make a request at this time. We have a disinterested witness in this case who can interpret and understand the language of the witness, Virginia Torress; the language difficulty has been a problem and if it is satisfactory to the Defense, I would like to make a request that he be sworn in as an interpreter, and if the Defense will stipulate to the testimony of the Doctor in this case who is not present and a technical witness for identification only, we can save the time of two witnesses.

COLONEL CHASE: We have had some difficulty in previous cases due to the number of different Visayan dialects, and it would be better if we had an interpreter with the local dialect. Does the Defense wish to comment on the request?

LIEUTENANT WATERS: Yes, sir, if I may speak off the record.

(Whereupon there followed an informal off the record discussion between the Defense Counsel, the Prosecution and the Commission.)

COLONEL CHASE: Will you make a formal objection?

LIEUTENANT WATERS: The Defense does not wish, at this time, to enter any agreement or stipulation in regard to the foregoing proposition by the Prosecution.

COLONEL CHASE: Under the circumstances it appears to be irregular to use a witness in a dual capacity, as interpreter and witness; I would suggest that the Prosecution call this witness back and then following his testimony, the Commission will permit the witness to sit at the Prosecutor's table; in the event that the official interpreter becomes confused, due to the difference in the dialect, he can inform the Prosecutor and we can try to straighten out the matter of the testimony in open court. Is that satisfactory to the Defense?

LIEUTENANT WATERS: Yes, sir.

CAPTAIN ROWE: As the trial will proceed I think this matter will be cleared up to show how much interest this witness has. I will raise the question again later on.

I would like to swear in the new reporter.

(Whereupon William E. Rice was sworn in as an official reporter.)

CAPTAIN ROWE: The Prosecution would like to introduce into the record Special Order No. 61, Paragraph 51, Headquarters, United States Army Forces Western Pacific, dated 14 March 1946, in which Lieutenant Colonel John A. Chase, (CMP) FA, is appointed President and Law Member of the Military Commission, appointed by Paragraph 2 of Special Order 60, this headquarters, dated 13 March 1946. (Naito)

LIEUTENANT WATERS: No objection.

COLONEL CHASE: It will be received.

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC

APO 707
14 March 1946

Special Orders)
:
No. ...... 61) EXTRACT

51. Lt. Col. John A. Chase, (CMP) FA, is aptd President and Law Member of the Military Commission, aptd by par 2, SO 60, this hq, dtd 13 March 1946. (Naito)

BY COMMAND OF LIEUTENANT GENERAL STYER:

OFFICIAL:

(Sgd.) Benito Morales
BENITO MORALES
Colonel, AGD
Asst Adj Gen.

J G CHRISTIANSEN
Major General, USA
Deputy Commander, and
Chief of Staff

DISTRIBUTION:
War Crimes (75)

RESTRICTED

CAPTAIN ROWE: In compliance with General Letter, subject Regulations Governing Trials of Accused War Criminals which was already introduced into the record, Prosecution introduces a duplicate copy of the testimony of Major Andrew A. Dick, Medical Corps, U. S. Army, Commanding Officer of the Field Hospital, Unit No. 2, as to his examination and diagnosis in connection with the finding of the wounds of Virginia TORRES.

LIEUTENANT WATERS: You are offering this in toto? We object to certain parts of this.

COLONEL CHASE: State your objection.

LIEUTENANT WATERS: We object to the phrase in Paragraph 1 in regard to the use of the phrase "by a Japanese soldier" as being beyond the knowledge and purview of the particular witness and we object to Paragraph 2 as being an opinion and not within the knowledge or purview of the particular witness. We are denied the right of cross examination in regard to the natter.

COLONEL CHASE: May I see the document?

CAPTAIN ROWE: It does come within Paragraph 5, A.

COLONEL CHASE: It is the ruling of the Law Member that portions of Paragraph 1 relating to the wounds having been inflicted by a Japanese soldier is a conclusion outside the knowledge or professional scope of the medical officer; the Commission, when this is introduced, is directed to disregard that portion of the document. As to Paragraph 2, it is believed that as a medical man he is qualified to express a professional opinion from the appearance of the wound as to the instrument with which they were inflicted and that

portion will be considered by the Commission and given such value as the Commission believes it is worth. The document will be admitted with instructions to disregard the portion about the Japanese soldier.

LIEUTENANT WATERS: We request that our exception be noted with regard to the second paragraph.

COLONEL CHASE: Let the record note the exception.

HEADQUARTERS
90TH FIELD HOSPITAL
UNIT NO. 2.

APO 159
7 December 1945

C E R T I F I C A T E

TO: War Crimes Investigation Section, General Headquarters, J. A. Section, AFPAC, APO 500.

1. This is to certify that Virginia Torres, age 17, Davao City, Mindanao, P. I. has been examined by me today for some old bayonet wounds inflicted on her by a Japanese soldier on 5 May 1945. Physical findings: 1-There are three parallel horizontal scars about 1½ inches long under the left breast. 2-There is another scar, same size at left side of back posterior axillary line. 3-Fifth small horizontal scar 3/4 inch long can be seen at middle of her neck.

2. From the size and location of wounds described above, the fact that these wounds were inflicted by a bayonet can be established to great certainty.

/s/ Andrew A. Dick
/t/ ANDREW A. DICK
Major, Medical Corps
Commanding

CAPTAIN ROWE: The chief purpose of this examination is merely to find the physical findings by a medical doctor. The Prosecution introduces into evidence a copy of the perpetuated testimony of Hector S. Quiambao, medical doctor, Calinan, Davao City, giving his medical opinion in connection with the examination of a — I will withdraw that. Withdraw the whole thing.

Virginia Torres was on the stand prior to the closing of the trial. Is there any further question that the Commission would like to present to her in connection with testimony prior to the presentation of the corpus delicti?

COLONEL CHASE: The Commission appears to be prepared to proceed.

CAPTAIN ROWE: Call Vicente Panlilo If the Commission please, this is slightly irregular in the plan of trial. The purpose of calling Mr Panlilo is that he may be present with me during the testimony of Virginia Torres. Mr. Panlilo is the man who I wanted to interpret any language problem of Virginia Torres in connection with her Visayan and Tagalog.

WHEREUPON, Vicente Hizon Panlilo , a witness called by the Prosecution, being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY CAPTAIN ROWE:

Q Will you please state your full name and address?

A Vicente Hizon Panlilo ., 58 years old, widower, residence in Davao City.

Q Do you know the Accused in this case?

A No, sir.

Q Do you recall the 22nd of March, 1946?

A Yes, sir.

Q What happened on that day?

A In that particular day I was in Davao City and Captain Rowe

invite me to have a ride for Calinan within Davao City. He told me that he had an investigation to make in that part. I joined and I followed him.

Q Where did we go in Calinan?

A We went to the drug store, a clinic of Doctor Hector S. Quiambao.

Q What did you observe while you were there?

A Captain Rowe talked to Mrs. Quiambao looking for Dr. Quiambao because they are going to take the statement of Dr. Quiambao whose investigation was conducted by Captain Rowe.

Q Do you recognize this paper? (Counsel handed a paper to the Witness.)

A Yes sir, I do.

Q What is it?

A This is the written statement made by Dr. Quiambao in Calinan City on March 22nd in my presence while Captain Rowe was propounding his questions and writing his questions. Dr. Quiambao was making this statement, and after preparing this statement Captain Rowe requested Dr. Quiambao to sign it and to put the initial on each and every one of the pages of the right side of each page, and on the fifth page appeared the signature of Dr. Hector S. Quiambao.

Q Was there any force, duress or promise of immunity given to Dr. Quiambao for making this statement?

A No sir, on the contrary Dr. Quiambao made the statement freely and voluntarily.

CAPTAIN ROWE: I introduce the statement of Dr. Quiambao into evidence as Prosecution's Exhibit A.

LIEUTENANT WATERS: If the Commission please, the Defense specifically objects to the alleged statement of Dr. Quiambao and moves it be stricken for the following reasons:

First, to admit this statement into evidence would deny the Accused the right of cross examination as guaranteed as a fundamental right, both in the American and Philippine constitutions, and as specifically set forth in Articles of War 25 and 38 in the Manual

for Courts-Martial.

Second, no showing has been made by the Prosecution that any attempt has been made to have the alleged signer present and to permit the accused to confront him in open hearing and for his defense counsel to conduct cross examination in this examination as guaranteed as a fundamental right under both the American and Philippine constitutions.

Third, there is no way for the Accused or his Defense Counsel to determine the hearsay element made in this purported statement, or determine the truth of the purported evidence, thereby denying the Accused the right of a fair trial.

Fourth, that the alleged statement which tho Prosecution is attempting to introduce into evidence has not been properly identified, in that the signatures have not been definitely established or that the person before whom they were taken is one who can legallly administer oaths.

Fifth, that the alleged affidavit constitutes hearsay evidence and should not be admitted by the Commission. The mere fact this statement has been reduced to writing does not change that hearsay rule.

Sixth, this is a purported statement of a medical doctor giving an expert opinion. There is no showing by the Prosecution here that the purported or alleged doctor is qualified to give such an expert opinion.

Seventh, I want to say that receipt in evidence of this affidevit would deprive the Commission the right to see this person in person and to judge him by his demeanor on the witness stand and to test his veracity.

Therefore, it is respectfully moved by the Defense that the statement be not received in evidence.

COLONEL CHASE: It is the opinion of the law member that under the provisions of paragraph B of the Regulations Governing Trials of Accused War Criminals dated 5 December 1945, the document is clearly admissible under the following specific authorization:

Under paragraph d, sub-paragraph (1)" The commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or such as in the commission's opinion would have probative value in the mind of a reasonable man. The commission shall apply the rules of evidence and pleading set forth herein with the greatest liberality to achieve expeditious procedure. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted:"— and then as a sub-head under the sub-paragraph (c)"Affidavits, depositions or other signed statements.".

The document will be admitted in evidence. Since those are rather long, I believe it will be well for the Prosecution to read it at your convenience.

CAPTAIN ROWE: I will bring this in now in the proper section of the case. I want Mr. Panlilo to sit with me as advising interpreter. This is a little out of line in plan of construction, so I could have Mr. Panlilo assist me in interpretation.

COLONEL CHASE: I think that the Commission will permit you to go a little outside of the regular procedure in which you would introduce your witnesses and in the interest of clarity while you have him on the stand, sometime before you excuse him, read that into evidence, before the witness leaves the witness stand.

CAPTAIN ROWE: Any cross examination?

LIEUTENANT WATERS: No cross examination.

COLONEL CHASE: I think perhaps you didn't understand. Some of the members of the Commission feel that while this witness is still on the stand under oath this document should be read into evidence.

CAPTAIN ROWE: I will do that, sir. Introduction into the record of Prosecution's Exhibit B statement of Dr. Hector S. Quiambao his perpetuated testimony taken at Calinan, Mindanao.

"Hector S. Quiambao, after having been duly sworn, testified at Calinan, Davao City, Mindanao, Philippine Islands, on 22 March 1946, as follows:

"1-Q. State your full name, age, address, nationality, and future address; status;
"A. Hector S. Quiambo, 32 yrs., Calinan, Davao City, Filipino, and, expect to remain in Calinan; married.

"2-Q. Are you a practicing physician; if so, how long?
"A. Yes, I am a duly licensed physician practicing medicine since 1940.

"3-Q Do you recall 20 March 1946? If so, what happened?
"A A skeleton was brought here by the member of the War Crimes Investigation, named Captain Rowe. The skeleton was referred to me for identification. Upon examining the skeleton, the pelvic part was suggestive of a female pelvic skeleton because of the following findings:

(1) The pubic arch is shaped more rounded than a male skeleton. In a male skeleton the pubic arch is more sharp, similar to a right angle.
(2) The pelvic inlet, has the general shape of a kidney; while, that of a male is generally heart shape with the apex pointing toward the pubic arch.
(3) The curvature of the sacrum is not very curved; whereas, in the male, it is curved and very prominent.
(4) The pelvic cavity is broad and shallow; whereas, in the male it is much deeper.
(5) The bony walls of this particular pelvic skeleton are more vertical, which is very suggestive of the female pelvis.

"4-Q Will you give your final opinion as to the type of skeleton this was?
"A Based upon the findings, my conclusion is that this is a female skeleton.

"5-Q Did you ever know anyone by the name of Aurora Torres? Give a description of her?
"A Yes. She is tall, larger than the average Filipina girl; I would estimate about 5 feet 7 inches; she is slender, well proportioned, complexion dark or brown, typical Filipina; considered pretty; she had a mole on the right forehead, and, had an excellent set of teeth; but, the right upper bicuspid is out of dental alignment, more inwards than the rest; her arms were hairy, and, also her legs were hairy; she had black, thick hair.

"6-Q How long did you know her?
"A I met her in March 1944, and, she started to work for

me in April 1944 until September 1944.

"7-Q I will show you, Prosecution Exhibit 'A', do you recognize it?
"A Yes, it is the picture of Aurora Torres. I notice the tooth that is out of alignment, the upper bicuspid; I notice that the mole does not show on the picture, there is an indication that it was retouched. I also recognize the handwriting as that of Aurora because she used to write the records for me in the clinic, when she worked for me.

"8-Q Where was the clinic?
"A In Calinan, along the main road.

"9-Q In your examination of the skull, did you notice anything else outstanding?
"A Yes, I observed that the right, upper, bicuspid in the upper jaw is out of dental alignment, more inwards than the other teeth; and, also that the right, upper molar was missing.

"10-Q In your opinion as a doctor, can you estimate about how long this person whose skeleton you examined, might have been dead?
"A My estimate would be longer than 6 months; because the putrefaction and decomposition indicated completion. The bones of the skeleton started to dry up.

"11-Q Can you estimate what the probable cause of death may be?
"A Due to the length of time that death has taken place, it is almost impossible and difficult to determine the exact cause of death.

"12-Q In comparing the features of the skeleton, are there any similarities to Aurora Torres?
"A The only outward appearance is the tooth, right upper bicuspid which is exactly similar to hers. The length of the femur is very suggestive of her height as indicating a girl taller than the average Filipina girl.

"13-Q What is the experience that you have to make this diagnosis that the skeleton is a female.
"A I was an intern in San Juan de Dios hospital in Manila for one year, 1939 to 1940, where I performed autopsies and identification of skeletons. In the course of that year I handled about 50 cadavers and skeletons.
While at Brent Hospital, in Zamboanga City, in 1941, I performed several autopsies. I had to identify many skeletons that were exhumed to determine whether they were male or female.

"/s/ H. S. Quiambao, M.D.

"COMMONWEALTH OF THE PHILIPPINES)
) SS
CITY OF DAVAO)

I, Hector S. Quiambao, being duly sworn on oath, state that it had been read to me, and that, I read and understood the foregoing transcription of my interrogation, and all the answers contained therein, consisting of five pages, are true to the best of my knowledge and belief.

"/s/ H. S. Quiambao, M. D.

"Subscribed and sworn to before me this 22 March, 1946.

"/s/ Samuel Rowe
Investigating Officer,
War Crimes Prosecution
Section

"We, Vicente Hizon Paulilio and Evangelina Quiambao certify that we witnessed, observed and heard the questions submitted to Hector S. Quiambao by Capt. Samuel Rowe, and, witnessed, observed and heard the answers that were given to those interrogations by Dr. Hector S. Quiambao. We also observed that the answers were voluntarily given without force, duress, compulsion or any immunity.

"/s/ V. Hizon Paulilio

"/s/ Evangelina A. Quiambao"

CAPTAIN ROWE: No further questions of the witness.

COLONEL CHASE: Did the witness examine and identify the signature?

Q Look at this exhibit again and explain whose signatures you see on this statement?

A I have the statement. The signature appearing on page 5 of this exhibit belonged to Dr. Hector S. Quiambao and the initials appearing in the right lower margin of each page belong to Dr. Quiambao and the signature appearing on page 6 of this exhibit is V. Hizon Paulilio and Evangelina A. Quiambao. The first one is my own signature and the second one is the signature of Mrs. Quiambao, the wife of Dr. Quiambao.

Q Did you see the signature written by Hector S. Quiambao?

A Yes, sir; in my presence and presence of other witnesses Dr. Quiambao signed this affidavit.

Q Did you observe whether Dr. Quiambao read that statement again before he signed his signature?

A Yes, sir; he examined this after this exhibit was made, it was delivered by Captain Rowe to Dr. Quiambao, so Dr. Quiambao read it again and he affixed his signature.

CAPTAIN ROWE: No further questions.

EXAMINATION BY THE COMMISSION

COLONEL HITCHINGS:

Q In the statement just read a skeleton is mentioned, did you see the skeleton?

A Yes, sir.

Q Do you know anything about where the skeleton came from?

A After the affidavit was made they took from two sides of the store -- drug store, a box and with the opening we found that it was a skeleton -- a skull was inside the box.

Q Who had possession of that skeleton?

A Supposed to be Dr. Quiambao, he was in the store, drug store of Dr. Quiambao; it was kept there.

COLONEL CHASE: Any further questions by the Commission? There being no response the witness was excused.

(Witness excused.)

LIEUTENANT McCULLOUGH: If the Commission please, I would like to make one further objection as to the admissibility of the statement that has been received into evidence on these grounds: That the trial has started, but regardless of what this statement is called, it is a fact, a deposition

that the Accused or his Counsel were not given notice that such a deposition would be taken; therefore, we were denied the right of the Accused, as set up under Paragraph B, of Paragraph 5, of the Rules of 5 December 1945, in that the trial was in fact being held at Davao, as a matter of convenience and that without being notified in order to cross examine this witness the Accused's rights are impaired; that he had been denied the right of a fair trial as guaranteed to the Accused in the rules of procedure before this Commission.

COLONEL CHASE: The Commission will take a short recess.

(Short recess)

COLONEL CHASE: The Commission will be in session.

In conference, during the recess, the Commission has discussed the question of the failure to afford the Defense an opportunity to confront and question the witness whose affidavit has been introduced. The Defense has agreed to, with the understanding we will continue with the trial at present and when the Prosecution's witnesses are all in we will afford the Defense, at that time, an opportunity to move for the right to confront and examine the witness in a suitable manner.

CAPTAIN ROWE: Let the record show that the Commission is present, the Accused with his Defense Counsel and duly appointed Defense Counsel of his own choice, and duly appointed Japanese interpreter of his own choice; and the Prosecution is ready to proceed.

At this time I would like to swear in three interpreters.

COLONEEL CHASE: They will be sworn.

(Whereupon the three following interpreters were sworn: Captain Jesus Lagdameo, Jr., Jose Batucan, and Praxedio Villaluz.

CAPTAIN ROWE: I call as my next witness Virginia Torres.

VIRGINIA TORRES

called as a witness on behalf of the Prosecution, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY CAPTAIN ROWE:

CAPTAIN ROWE: I want to remind you that you are still under oath in connection with the case of United States against Tetsuo Naito.

Q Miss Torres, do you remember 20 March 1946?

A Yes, sir.

Q What do you recall happened on that day?

A On that day we went to Biac to look for the graves of my mother, sister, brother and other fellow.

Q Who was present?

A Captain Rowe, my auntie, my brother, Alfonso; Susimo Companiado.

Q That is all you remember?

COLONEL CHASE: Will you have the witness state the name of the aunt to whom she referred?

Q (By Captain Rowe) What is the name of your auntie?

A Mrs. Garcia.

Q Did you see Susimo Companiado there?

A Yes, sir.

Q What did he do?

A He pointed the place where he had seen my mother being killed.

Q Then what happened?

A We were searching for my mother and we don't find them.

Q After you searched, you all searched around for a grave, what happened next?

A We went back to the house and I pointed the place where my sister, the last time I saw my sister taken by the Japanese.

Q Do you remember what your sister was wearing the last time that you saw her alive?

A Yes, sir.

Q Describe what she was wearing.

A She was dressed in brown; the neckhole was round; there was an opening here (indicating around neck) with shaped on left side of the dress and there was pleating in the waist, and the cut was -- the skirt was three pleats.

Q Was that the last time that you saw your sister alive?

A Yes, sir.

Q You said in your previous testimony that you saw her stabbed by a Japanese soldier?

A Yes, sir.

Q Was she wearing that same dress at that time?

A Yes, sir.

Q What happened next?

A We went to the -- we went inside the abaca -- banana plant, so my brother --- I pointed the place the last time I saw her, and my brother, Alfonso Torres, began the digging of the grave.

Q How did you know that that was the place of your sister's grave?

A Because I saw her -- because the Japanese take her in

that place -- the Japanese take her in that place.

Q After you were stabbed, did you return later to that place?

A Yes, sir.

Q And what did you notice?

A I noticed a man at the -- I went to the place, I noticed there was something like a grave which was something -- something was buried.

Q Did you dig that up at that time?

A No, we don't.

Q Why not?

A Because the three companions who cured me told me that there are still Japanese stragglers, so they let me go home.

COLONEL CHASE: Will you read the last answer?

(Last answer read.)

Q (By Captain Rowe) Did you go home alone?

A With the three boys.

Q Were they afraid?

A Yes, sir.

Q Now let us come to March 20, 1946, what happened at that place that you pointed out as a grave?

A My brother take the spade and began to dig; we saw skeletons, I right away -- I recognize my sister for the rope was still there which the Japanese tied her and there was still the maps which "he" sew in the dress; there was also the dress which was still pleating.

Q Did you see a complete skeleton?

A Yes, sir.

Q What did your brother take away from the skeleton at that time?

A "She" took all the skeleton and --

CAPTAIN ROWE: I withdraw that question and will make it clearer.

Q (By Captain Rowe) You said that you saw a dress, how much of a dress did you see?

A As big as that (indicating with hands).

Q Did your brother take it away from the body?

A Yes, sir.

Q Describe that dress.

A The dress, the pleatings were still there and dress was still brown and there was also the snap I have with me, the snap.

Q What else did you see or observe with the bones?

A He recognized her at the same time.

Q What was outstanding that made you believe it was your sister?

A Because one of her teeth which was in the right in their place was not in line with the front teeth and one of her molars which was on the upper jaw had been pulled by the dentist.

Q I will show you Prosecution's Exhibit A, do you recognize that picture?

A Yes, sir.

Q Who is that a picture of?

A It is my sister, Aurora Torres.

Q Do you recognize anything on that picture?

A Yes, sir, the teeth.

Q What is the peculiarity of the teeth?

A It is not in line with the front teeth.

CAPTAIN ROWE: Let the record show she pointed to the tooth that is out of alignment with the rest of her teeth (indicating on Prosecution's Exhibit A).

COLONEL CHASE: May the Commission see that?

CAPTAIN ROWE: I'm sorry, sir. Yes, sir.

Q (By Captain Rowe) Now, you said that she had a tooth pulled, where was that tooth located?

A It was located in the upper molar which was in the right.

Q How did you know that she had that tooth pulled?

A Because I had my teeth pulled together with her.

Q You had your tooth pulled at the same time?

A Yes, sir.

Q With hers?

A Yes, sir.

Q Was that tooth missing in the skull?

A Yes, sir.

Q Look at this picture again (Prosecution Exhibit A) again at the teeth, did all the rest of the teeth look like that picture?

A Yes, sir.

Q Were they even? (Speaking to Interpreter): You had better explain that in Tagalog.

LIEUTENANT McCULLOUGH: At this time the Defense would like to object to this line of questioning and move that the opinion answers of this witness be stricken for reasons she is not an expert. There has been no foundation laid to show she is an expert in the identification of

skeletons or in the identification of teeth, or teeth formations. That she has used certain terms "bicuspid", "molars", and we doubt very seriously if this witness could pick out her sister's body or her skull from a number of them that had similar identification marks on them. I therefore feel it is improper for expert testimony to be brought in through this witness. The Prosecution has failed to show she is an expert and can give an opinion as such; therefore, I move that her testimony relating to expert evidence or testimony be stricken from the record and not be considered by the Commission.

COLONEL CHASE: It is the opinion of the Law Member that the testimony of the witness has been in no sense an attempt to give expert testimony, but solely to point out distinguishing features which from daily association over a long period of time she knew to be the physical peculiarities of her sister. The objection there, therefore, is over ruled.

Q (By Captain Rowe) After you saw the bones at the grave and observed the things you testified to, whom do you believe that skeleton was?

A Of my sister.

Q Her name?

A Aurora Torres.

Q What happened next?

A My brother Alfonso Torres took the bones and put it in a box and we brought it to Dr. Quiambao.

CAPTAIN ROWE: Continue.

THE WITNESS: When we reached Calinan we went directly to the clinic of Dr. Quiambao, we asked --- Alfonso

asked Dr. Quiambao to see whether it was a male or female; I saw Dr. Quiambao took the bones and measure it, then he said [illegible] it was a women's skeleton

CAPTAIN ROWE: No further questions.

LIEUTENANT McCULLOUGH: On behalf of the Defendant, we specifically move that the opinion which she gave "she believed that it would be of my sister" she is not properly qualified to determine whether or not this skeleton was either that of a male or a female, particularly whether or not it was that of her sister.

COLONEL CHASE: Objection denied.

CAPTAIN ROWE: No further questions by the Prosecution Any questions by the Defense?

LIEUTENANT McCULLOUGH: No questions.

CAPTAIN ROWE: Any questions by the Commission?

COLONEL CHASE: There being no questions by the Commission the witness will be excused.

(Witness excused.)

CAPTAIN ROWE: I call as my next witness Alfonso Torres.

ALFONSO TORRES

called as a witness on behalf of the Prosecution, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY CAPTAIN ROWE:

Q Give your name, age, address, and nationality.

A My name Alfonso Torres, I am 23 years old, I reside at Sta. Cruz, Davao, I am Filipino.

Q Do you know the Accused in this case?

A Yes, sir.

Q What is his name?

A Naito.

Q Can you point him out?

A There (indicating).

CAPTAIN ROWE: Let the record indicate he pointed to the Accused.

Q Are you the brother of Virginia Torres?

A Yes.

Q Are you the brother of Aurora Torres?

A Yes, sir.

Q Can you give the Commission the names of the rest of your family?

A My mother's name Beatriz L. Torres, my younger brother was Eugenio Torres, Aurora Torres, my father Mariano Torres.

Q I show you Prosecution's Exhibit A, do you recognize it?

A Yes, sir.

Q Who is it?

A It is my sister, Aurora Torres.

Q When was the last time you saw Aurora Torres?

A Last time I saw her was about November 1944.

Q Do you recall March 20 1946?

A Yes.

Q What happened on that day?

A I was at Biao in our farm fixing the house when about noon time you arrived, Virginia Torres, Mrs. Garcia, Susimo Companiado, arrived in the house and they told me that you are going to look for the bones of my mother, Eugenio, and

Aurora Torres, and other fellow who was with them when they were killed.

Q Where did they go?

A Susimo Companiado takes us to the place where he saw my mother was killed, my brother and the other fellow who was with my brother, he pointed to the tree of exact spot where he saw my mother was standing.

Q Did Susimo Companiado show where he was located at the time he saw the killing?

A Yes, sir.

Q About how far was that from the place of killing?

A It was about 40 to 50 feet.

Q What happened next?

LIEUTENANT WATERS: If the Commission please, we would like, at this time, on behalf of the Defense, enter our objection to "kill" and "killing" in the question and answer as being given by this witness as being outside the evidence and assuming a fact not in evidence. The fact that we were here to try and what the Prosecution has alleged and still has to prove is that there was a killing or some one was killed.

COLONEL CHASE: I think the point is well taken; the Commission will disregard in its consideration the portion of the testimony of this witness that has been objected to and the Prosecution will so phrase his question as not to draw any implications.

Q (By Captain Rowe) What happened after Susimo Companiado pointed out the place where he last saw your mother, your brother and the other boy?

A We went around looking for their grave and after an hour and a half search we were unable to see their grave and so we went back to the house.

Q What happened when they got back to the house?

A When we arrived at the house Virginia Torres pointed out the place where she last saw Aurora Torres and "he" directed us from the spot where "he" last saw her and "he" led the way to the place where she said that was the grave.

Q She saw a grave?

A Yes, sir.

Q What were you told to do?

A I was told to dig on the spot where she, where Virginia Torres pointed was a grave.

Q After digging, what did you find?

A After digging, I saw the skeleton.

Q Was it a complete skeleton?

A Yes, it was a complete skeleton.

Q Were any bones broken?

A The part I touched with the spade -- I used the spade.

COLONEL CHASE: Will you read that answer?

WHEREUPON, the Reporter read the last answer.

Q What did you do with the bones?

A I put it in the big box.

Q While you were taking the skeleton out, what did you observe?

A I noticed that there was still a rope on the wrists which were crossed this way on her breasts.

COLONEL CHASE: The record will show that the witness illustrated by crossing his wrists in front of his body.

Q Did you hear anything said when you picked out that rope?

LIEUTENANT McCULLOUGH: We are going to object to anything he heard said, if the Court please, since the defendant was not there. It was not in his hearing. He had no opportunity to deny anything, any implicationsin this case .

CAPTAIN ROWE: Any statements that the witness heard at that time are admissible in evidence, and is one of the exceptions to the hearsay rule.

LIEUTENANT McCULLOUGH: In using hearsay evidence of that nature to prove a corpus delicti in this case we feel that is objectionable and we renew our objections on those grounds.

COLONEL CHASE: I am inclined to believe that the testimony is admissible under the broadened scope that is provided under the directive to these Commissions. I am also inclined to believe some limit must be placed on the broadening of the rules of evidence, and in this case I will rule in favor of the Defense, and the answer will be striken.

Q What was the next thing you observed about the skull? Do you understand the question?

A Yes, sir. I noticed that the face of the skeleton, one of

the teeth was inside. I noticed that one of the molars was missing right here, the upper one.

CAPTAIN ROWE: Let the record indicate that in both instances the witness pointed to the exact locations where the tooth was turned in and the molar was missing.

Q Continue.

A And none of the teeth has no gold filling.

Q I will show you Prosecution's Exhibit —

COLONEL CHASE: Just a moment, please; will you read back the answer?

WHEREUPON, the last answer was read by the Reporter.

Q I will show you Prosecution's Exhibit A, a picture of Aurora Torres. (Counsel handed a picture to the witness.) Do you notice on that picture anything which is the same as the observation you made of the skull?

A Yes, sir.

Q What?

A This is the tooth that showed on the skull.

CAPTAIN ROWE: Let the record show that the witness pointed on the picture to the tooth which was turned in.

Q Did that skeleton that you took from the grave have anything else on; any clothes?

A It was still a —

LIEUTENANT WATERS: We are going to object to the Prosecution leading the witness around by the nose. We don't mind a little of it, but suggesting to the witness his answer is unsportsmenlike and unscrupulous.

CAPTAIN ROWE: I object to the comments made by the Defense that the Prosecution is acting unsportsmanlike and intimating that he

is misleading the witness.

COLONEL CHASE: It is the opinion of the Law Member that since this witness has been on the stand the only question which faintly resembles a leading question was the latter part of the last one, and we will ask the Prosecutor to rephrase that question and to be careful.

Q I will withdraw the question. Do you remember taking anything else from the grave besides the skeleton?

A I took only the skeleton piece by piece and placed them in the big box, and on taking this part here, those bones here, (Indicating) I found a cloth as big as this size right here (Indicating). It was a little, some parts already rotten, and I noticed that it was a women's dress.

COLONEL CHASE: Let the record show that the witness indicated with his hands the area of his body over his hips and at the lower part of his back and indicating the size of the piece of cloth found holding his hands in front of him to indicate an area of about two feet.

Q Do you remember the color?

A It is brown.

Q Was that the color of the dress?

A Yes, color of the dress.

Q I will withdraw the question. What happened next?

A On looking at the dress I noticed that there were pleatings made on the dress and --

LIEUTENANT McCULLOUGH: If the Commission please, we would like to object to this answer. He has stated that he found a piece of cloth in the grave, and now he is talking about a dress with pleats on it. We don't believe there is a connection.

COLONEL CHASE: Will the Reporter read the answer to a question in which he was asked whether he found anything in the grave except a skeleton.

WHEREUPON, the answer was read by the Reporter as follows:

"Q Do you remember taking anything else from the grave besides the skeleton?
A I took only the skeletons piece by piece and placed them in the big box, and on taking this part here, these bones here, I found a cloth as big as this size here. It was a little, some parts already rotten, and I noticed it was a women's dress."

COLONEL CHASE: Apparently the answer as read back by the Reporter contains a distinct statement from the witness in his previous testimony that it was a dress. The objection is therefore not sustained.

Q Mr. Torres, what did you do next with the bones?

A I placed them carefully all in the box and then I --

Q If you can't express yourself in English, express yourself in Tagalog.

A (In English.) Captain Rowe said, "We will go to Calinan, look for a doctor and try to identify the skeleton, whether it is a male or a female."

Q When we got to Calinan where did we go?

A We went to the clinic of Dr. Quiambao.

Q What did Dr. Quiambao do?

A He examined the skeleton and said that it was a female skeleton.

Q What did we do with the box and the skeleton, after Dr. Quiambao was through examining it?

LIEUTENANT McCULLOUGH: If the Commission please, we object to that as immaterial and irrelevant.

CAPTAIN ROWE: I will withdraw the question.

LIEUTENANT McCULLOUGH: We don't believe it is material or relevant in this case, except what the witness did the bones.

CAPTAIN ROWE: I will withdraw the question. No further questions.

COLONEL CHASE: Questions by the Defense?

CROSS EXAMINATION

BY LIEUTENANT McCULLOUGH:

Q I believe you said there were certain teeth of your sister Aurora which were missing from the upper part of her mouth; is that correct?

A Yes, sir.

Q What teeth?

COLONEL CHASE: I think the question is not quite in accordance with the witness' testimony. He testified, I think, there was one misplaced tooth, and one missing tooth.

CAPTAIN ROWE: If I may raise an objection at this point, we are here to protect the rights of the Accused, as well as the Defense Counsel, and both the Defense Counsel and the Prosecution are here to furnish complete facts for the Commission. The Interpreters here are only to interpret. There is a constant set of notes being passed from the Interpreter to the Defense with pictures on it. If the Interpreter is assisting the Defense, I want him withdrawn as an Interpreter.

LIEUTENANT McCULLOUGH: Our Chief Interpreter, a captain is also a dental officer. At my request I asked him to give me the technical names of the upper set of teeth. That is all that has passed between him and me. I will show them to the Commission at this time so they may see.

WHEREUPON, Counsel passed a paper or papers to the President of the Commission.

CAPTAIN ROWE: If that is used as expert testimony, the dental officer should be placed on the stand as an expert.

COLONEL CHASE: It is my opinion, subject to the opinion of the other members, there is nothing improper in the action of the captain in furnishing information of that sort. It would certainly not be improper to do so outside of the courtroom. Will you rephrase that question?

Q Will you state which tooth was missing from her upper teeth?

A (Pointing).

Q Was it the last tooth?

COLONEL CHASE: Let the record show the witness indicated with his finger the rear portion of the right side of his upper jaw inside his mouth.

Q Was that the last tooth on the right side that you pointed to?

A No, it was not.

Q It was not the last one?

A It wasn't the last one.

Q Which one was it, then?

A (Pointing.)

Q Is it next to the last one you are pointing to?

A Yes, sir.

Q Do you know how many molar teeth are in the upper part of the jaw?

CAPTAIN ROWE: I object to that. It calls for technical testimony of a dentist. He is not a dentist and does not know the names of all the teeth.

COLONEL CHASE: Objection overruled. He may answer if he knows.

CAPTAIN ROWE: Read the question, please.

WHEREUPON, the last question was read by the Reporter.

A No.

Q Do you know the technical names of any of the teeth other than the term "molar" which you have previously used?

A I do not.

Q How did you happen to use the word "molar"?

A I used the word "molar" because I understand the name of the teeth on the inside part here are"molars" so I called it a "molar".

Q After you left homein November '44, did you ever see Aurora Torres again?

A Yes.

Q When?

A It was about the middle of November 1944.

Q After that did you ever see Aurora Torres again?

A No more, I didn't see her.

LIEUTENANT McCULLOUGH: That is all.

COLONEL CHASE. Any further questions by the Prosecution?

REDIRECT EXAMINATION

BY CAPTAIN ROWE:

Q Before you left home in November 1944 do you remember whether Aurora had all her teeth?

A I remember that Aurora and Virginia my sisters went to Calinan to have their teeth pulled.

Q Do you know which tooth was pulled from Aurora?

A When they arrive home from the dentist they showed me, Aurora showed me where the teeth was pulled.

CAPTAIN ROWE: No further questions by the Prosecution.

COLONEL CHASE: Questions by the Commission? The witness may be excused. There will be a recess for ten minutes.

WHEREUPON, at 1020 hours the Commission recessed until 1030 hours, at which time the proceedings were as follows:

COLONEL CHASE: The Commission will be in session.

CAPTAIN ROWE: If the Commission please, let the record indicate the Commission is all present, the Accused is present with his duly appointed and chosen Defense Counsel and the Interpreter of his choice, the Interpreters are present and the Prosecution is ready to proceed. Will you please call Mrs. Quiambao.

WHEREUPON, Evangelina A. Quiambao, a witness called by the Prosecution, being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY CAPTAIN ROWE:

Q What is your name, address and nationality?

A Evangeline A. Quiambao. My address is Calinan, Dabao City. I am a Filipino.

Q Are you the wife of Dr. Hector S. Quiambao?

A Yes, I am.

Q Do you know the Accused in this case?

A I recognize the face.

Q Can you point to the face that you recognize?

A (Pointing.)

Q Where?

A (The witness stood up and walked a few steps forward and pointed with her hand.)

Q Out here?

A No.

Q Where?

A (Pointing.)

Q Do you know his name?

A No.

Q From where do you recognize the Accused?

A I recognize from his face.

Q From what place do you recognize the Accused?

A I remember seeing him in Calinan, the place where I live.

Q Do you know the Torres family?

A Yes, I do.

Q How long did you know the Torres family?

A I have known the Torres family for about a year, but I have known Aurora Torres and Alfonsio Torres the brother longer.

Q Do you know the members of -- I will withdraw the question. Do you know the other members of the family by name?

A I know the mother as Mrs. Torres. I know Aurora Torres, Virginia Torres, the sister, Alfonsio Torres the brother and a younger brother whom they call Winnie: that is the nickname for Eugenio.

Q How long have you known Aurora Torres?

A I know Aurora Torres when she was a student in highschool; that was before the war broke out in 1941.

Q Can you give a general description of Aurora Torres?

A Aurora Torres was a tall girl, taller than the average Filipino girl; she had a well proportioned body, although she was rather slender for her height. Aurora Torres was Kayumangui in complexion.

Q What does Kayumangui mean?

A Kayumangui is the term used for a typical brown Filipino color. Aurora Torres was Kayumangui in complexion, which is the typical brown color of a Filipino. Aurora Torres had a sweet smile which showed her

beautiful set of teeth. She had dark expressive eyes. She had thick black hair which was a beautiful background for her lovely face. Aurora Torres was a very unassuming and respectful girl, especially to her elders.

Q Do you recall anything outstanding about Aurora Torres?

A Yes, one thing outstanding about her is her teeth; another is her beautiful smile which very well showed her beautiful set of teeth; another one was a big mole which showed on the upper right hand side of her forehead.

Q Was there anything particularly outstanding about her teeth?

A Yes, there was.

Q What was it?

A I remember very well in my admiration of her beautiful set of teeth I told her once, "Aurora, you have a beautiful set of teeth." Aurora Torres, in her very modest way said, " No, I really do not have a beautiful set of teeth because of one"— pointing to a tooth on the upper right hand side—"is turned inwards, and I do not consider it a beautiful set of teeth."

CAPTAIN ROWE: Let the record show the witness pointed to a tooth inside.

Q I will show you this picture, Prosecution's Exhibit A. Do you recognize that picture?

A Yes, I do; it is a picture of Aurora Torres.

Q Is there any similarity in the teeth with that of your description?

A Yes, the beautiful set of teeth is shown, and the tooth which is turned inwards is clearly shown in this picture.

Q When was the last time that you saw Aurora Torres?

A The last time I saw Aurora Torres was April 1944—'45; because that was about a month before I heard that she was killed. April 1945.

Q Was Aurora Torres ever employed by your husband?

A Yes, she was; she served as an attendant to my husband.

Q Were you there at the time?

A Yes, I was.

Q Did you have an opportunity for observing her daily?

A Yes, I did because I also worked in my husband's clinic.

Q Do you recognize -- I will withdrew the question. Can you recall what the handwriting of Aurora Torres looks like?

A Yes, I do.

Q I will show you Prosecution's Exhibit A and see do you recognize the handwriting.

A Yes, I do; this is the handwriting of Aurora Torres.

Q What makes you draw that conclusion ?

A It makes me drew that conclusion because Aurora Torres used to write records for my husband, and I used to keep those records for him.

Q Do you recall March 20th 1946?

A Yes, I do.

Q What happened on that day?

A On that day in the afternoon Captain Rowe, together with the Virginia Torres, Alfonsio, Virginia's brother and/auntie of Virginia and Alfonsio, came to my husband's clinic bringing with them a wooden box, and the contents of the wooden box were shown to Dr. Quiambao . Captain Rowe asked Dr. Quiambao if he could tell from the bones whether that was a skeleton of a woman or a man. Dr. Quiambao answered yes, he could; so Dr. Quiambao put the bones together, took a measuring stick and did some measurements. After his findings he concluded that those were the bones of a female, a woman.

Q Did you see the skeleton at that time?

A Yes, I did.

Q Did you observe Dr. Quiambao examining the skeleton at that time?

A Yes, I did.

Q Did you notice any similarities between that skeleton and the description of Aurora Torres?

LIEUTENANT McCULLOUGH: We object for the reason that it is calling for the opinion of a witness not particularly qualified as an expert and leaving the implication—

COLONEL CHASE: The objection is not sustained. The question is not in any sense of the word designed to bring out the witness as an expert, but stating whether or not she witnessed any physical peculiarities with which she was familiar.

THE WITNESS: Will you kindly repeat the question?

WHEREUPON, the last question was read by the Reporter.

A Yes, I did; I noticed the skull particularly which had the set of teeth, the tooth which was turned inwards was very well marked.

Q I will again show you Prosecution's Exhibit A. Was that the same tooth that was turned inward? (Counsel handed the witness a photograph.)

A Yes, exactly in the same position.

Q Did you notice whether any teeth were missing?

A Yes, I did, and I also heard the doctor say that a tooth, a molar was missing.

COLONEL CHASE: Let the record show that the witness pointed with the first finger of her right hand to her cheek near the rear of the upper jaw.

Q Do you recall March 22nd 1946?

A Yes, I do.

Q What happened on that day?

A On that day Captain Rowe together with Virginia Torres, Alfonsio Torres and Attorney Hizon Paulilio came to my husband's clinic.

Q What happened?

A The bones were again examined, and at a round table Captain Rowe asked questions of Dr. Quiambao. At the table were Captain Rowe, Dr. Quiambao, Attorney Hizon Paulilio and myself.

CAPTAIN ROWE: Since the testimony of Dr. Quiambao is in evidence as an exhibit I do not think it will be necessary to present it to the witness at this time for verification. If the Defense requests that we have the witness identify it, we could get the affidavit back into the courtroom.

LIEUTENANT McCULLOUGH: The Defense feels it is up to the Prosecution to conduct its case in any way he wants to put in his case. It is perfectly satisfactory to us provided it is within the rules of procedure.

CAPTAIN ROWE: May the Prosecution request a recess until we can get the papers in here?

COLONEL CHASE: The Commission will take a short recess.

WHEREUPON, at 1045 hours the Commission recessed until 1048 hours, at which time the proceedings were as follows:

COLONEL CHASE: The Commission will be in session.

CAPTAIN ROWE: Let the record indicate all members of the Commission are present, the Accused together with his duly appointed and chosen Defense Counsel and the Japanese Interpreter of his choice, the Interpreters for the court are present, and the Prosecution is ready to proceed.

Q

DIRECT EXAMINATION (CONT.)

BY CAPTAIN ROWE:

Q Mrs. Quiambao, I will show you this, Prosecution's Exhibit and ask you if you recognize it?

A Yes, I do.

Q What is it?

COLONEL CHASE: Better identify your exhibit by its number.

Q I show you Prosecution's Exhibit B, and ask you whether you recognize it?

A Yes, I do.

Q What is it?

A These were the papers signed by Dr. Quiambao after he was asked questions by Captain Rowe, and these were written by Captain Rowe as he asked questions of Dr. Quiambao, and as Dr. Quiambao answered Captain' Rowe's questions.

Q Was there any force, duress, coercion or promise of immunity given to Dr. Quiambao?

A There was none.

Q Were those statements voluntarily given?

A These statements were voluntarily given.

Q Did you hear Captain Rowe request Dr. Quiambao to come to Manila to testify?

A Yes, I did.

Q What was the answer of Dr. Quiambao?

A Dr. Quiambao —

LIEUTENANT WATERS: We object; that is strictly hearsay and it could have been placed into the deposition of the witness to be placed before the Commission.

COLONEL CHASE: The objection is not sustained. The Commission is at present reserving judgment on the question of whether the doctor is to appear before it and first of all under the directive of 5 December 1945 hearsay evidence is I believe admissible and the Prosecution at this time is apparently trying to establish for the information of the Commission the reason why the testimony of the doctor was submitted in affidavit form instead of his being here present. The witness may answer.

THE WITNESS: Will you kindly read the question?

WHEREUPON, the last question was read by the Reporter.

A Dr. Quiambao said he would be willing to come and testify in the court in Manila, but due to three very serious cases of his victims of a Japanese land mine, he could not come to Manila because these three patients are between life and death, and he said it would disturb his conscience if these patients died in his absence; he said he was willing to send an affidavit of his statements.

Q Is Exhibit B the statements that he made to questions asked?

A Yes, Exhibit B is the written statements.

Q Did he give those answers in your presence?

A He gave those answers in my presence.

Q Did you hear all the answers and the questions?

A Yes, I did.

Q Did you observe Dr. Quiambao initial each page?

A Yes, I did.

Q Did you observe Dr. Quiambao sign page 5 as the final statement?

A Yes, I did.

Q Did you sign that statement yourself?

A Yes, I did.

Q How did you sign that statement?

A I signed my full name Evangelina A. Quiambao.

Q As witness?

A As a witness.

CAPTAIN ROWE: Your witness.

LIEUTENANT McCULLOUGH: No questions.

COLONEL CHASE: Questions by the Commission? There appear to be none. The witness is excused.

CAPTAIN ROWE: The Prosecution rests.

LIEUTENANT WATERS: At this time in behalf of the Accused the Defense Counsel respectfully renew their motion which was made earlier in the record this morning as to the admissibility of the affidavit of Dr. Quiambao.

COLONEL CHASE: The Commission will adjourn to a conference room and would like to have the Prosecution and Defense participate in the discussion.

WHEREUPON, at 1054 hours, the Commission recessed until 1056 hours, at which time the proceedings were as follows:

COLONEL CHASE: The Commission will be in session.

In the conference of the Commission, at which the Prosecution and Defense were present, it was agreed that the Prosecution would stipulate that that portion of the affidavit of Dr. Quiambao having to do with any possibility of personal identification, that is as to the teeth or length of the femur, as tending to establish the skeleton as that of an unusually tall Filipino girl will be disregarded; also, the Defense will stipulate that the Doctor, if present, would have testified as to that portion of the affidavit tending to prove only that in his professional opinion the skeleton was that of a woman, is that correct?

LIEUTENANT McCULLOUGH: That is agreeable, sir.

CAPTAIN ROWE: Agreeable, sir.

COLONEL CHASE: The stipulation agreed upon will, therefore, govern the record in the case.

CAPTAIN ROWE: The Prosecution rests.

LIEUTENANT McCULLOUGH: If the Commission please, the Defense would like to recess until 1330 before going on with their case.

COLONEL CHASE: Unless it is absolutely necessary we had figured on meeting at 1300.

LIEUTENANT McCULLOUGH: That is agreeable, sir.

COLONEL CHASE: The Commission will recess until 1300.

(Whereupon, at 1100 hours, a recess was taken until 1300 hours, 28 March 1946.)

A F T E R N O O N S E S S I O N

(The trial was resumed, pursuant to recess, at 1300 hours.)

COLONEL CHASE: The Commission will be in session.

CAPTAIN ROWE: Let the record show that the Commission is present; the Accused together with his duly appointed Counsel and Counsel of his own choice, and personal Japanese interpreter; and the Prosecution is ready to proceed.

LIEUTENANT McCULLOUGH: If the Commission please, the Defense, at this time, would like to enter a plea of jurisdiction of the Commission in here, this case, also present a motion to dismiss on the following grounds.

Comes now the Accused Tetsuo NAITO, by his duly appointed Defense Counsel, and denies the jurisdiction of this Military Commission to try him upon the Charge and Specifications preferred against him and moves that the case be dismissed for the following reasons:

First, the Supreme Commander for the Allied Powers has no authority from such Powers to appoint this Military Commission to try a Japanese civilian not accompanying or acting with the army.

Second, no martial law and no military government in the Philippine Islands and no active hostilities between the United States of America or any of her allies and Japan existed at the time of the appointment or convening of this Military Commission.

Third, the rules of procedure and evidence under which this Military Commission purports to be acting deny the accused the fair trial guaranteed under the constitution

and laws of the U. S. and of the Commonwealth of the Philippines, including particularly such of the Articles of War enacted by the Congress of the United States as are by their very terms are made applicable to military commissions.

Fourth, if the Supreme Commander for the Allied Powers has authority to appoint military commissions, he has delegated such authority to the Commander-in-Chief, AFPAC and such authority cannot be redelegated to the Commanding General, AFWESPAC.

Fifth, the United States not having given notice of the impending trial to the Protecting Power of Japan as made mandatory by the Geneva Convention of July 27, 1929, relative to the treatment of prisoners of war, can not properly and legally prosecute the accused on the charge.

Sixth, that the prosecution has failed to prove beyond a reasonable doubt the guilt of the accused to the charge and specifications. Now, relating to those six points, I would like to submit a brief, a short argument on my motion to dismiss for lack of jurisdiction.

The Military Commission presently trying this case is without jurisdiction. The Commission was appointed by the Commanding General of the United States Armed Forces, Western Pacific, pursuant to authority delegated to him by the Supreme Commander Allied Forces, Pacific. The record shows no grant of authority by either the Allied Powers; or by the Congress of the United States or the President of the United States. A military commander has power to appoint a military commission, we contend, only where there is martial law, military government of occupied territory, active hostilities

or over persons accompanying or serving with the army, I want to again repeat that last phrase "over persons accompanying or serving with the army", none of which were in effect at the time this Commission was appointed. There was neither martial law nor military government in the Philippines. Hostilities ceased on September 2, 1945. There is today no justification in the law for the exercise by the Supreme Commander for this extraordinary power. The Philippines are not an area occupied by the armed forces. Paragraph 271, War Department Field Manual "Rules of Land Warfare" defined occupied territory in its reprint of Article 42 of the Annex of the Hague Convention, October 18, 1907: "A territory is considered occupied when actually placed under the authority of the hostile army."

The United States is not and never has been a hostile army with respect to the Philippine Islands. Neither the United States or any of its allies has been a hostile army with respect to the Philippine Islands in this war. The re-entry by the United States into the Philippine Islands in 1944 and 1945 constituted a recovery of territory and liberation, rather than an occupation. From the date of our re-entry on Philippine soil, the Commander-in-Chief, United States Army Forces, Pacific, consistently affirmed and recognized the full governmental responsibility of the Philippine Commonwealth. This is evidenced in various proclamations in the Official Gazette, to which I will refer by book and page, April 1945, page 86; May 1945, pages 145 to 148; and September 1945, page 494.

On 22 August 1945 the Commander-in-Chief of United States Army Forces, Pacific, issued a proclamation which stated: "Effective on September 1, 1945, the United States Army Forces in the Pacific shall cease from further participation in the civil administration of the Philippines, as such is no longer necessary." I would like to point out that by that proclamation that MacArthur as Commanding General, specifically, the proclamation said, "he would have a hands-off policy in the civil administration of the Commonwealth of the Philippines." At the time the courts are reopened and are functioning.

We contend he had no power to appoint a Military Commission to try a Japanese civilian living in the Philippines without delegation of power from the President or the Allied Powers except under the circumstances which I have outlined previously.

Under the Cherge in this case, Tetsuo NAITO is a Japanese civilian, acting as President of the Japanese Neighborhood Association of Biao, Guianga District, Mindanao, Philippine Islands.

The Prosecution has never put one iota of evidence in these record to show that NAITO was acting under or in conjunction with the Japanese Army in the Philippines.

These powers to establish such a commission anywhere must of necessity be derived from the power of the President to wage war which Congress has declared or from his Allied Powers. The power of military commanders must of necessity come by express or implied delegation of such authority to them. Such grant of authority from the President may be granted expressly or by implication to a field commander where

there is martial law, military government of occupied territory such as Japan or over persons accompanying or serving with the army where he is engaged in active hostilities. But does any one, for example, contend that the Commanding General of the Third Service Command or of the Military District of Washington, without an express delegation of authority from the President, would have the authority to appoint and convene a military commission to try the saboteurs or any other civilians? We contend that the Supreme Commander for the Allied Powers, the Commander-in-Chief, AFPAC, and the Commanding General, AFWESPAC, have no more implied authority in these Islands, which are just as much domestic territory as Washington, District of Columbia, not under martial law at a time long after active hostilities have ceased. To have such authority at this time and place if it could be granted by the President any military commander, may have expressed grant of authority from the Congress or the President of the United States and the record shows no such grant to try a Japanese civilian.

And there are valid reasons for not implying such grant of authority. A military commission acts summarily over all crimes tried by it and subject to the death penalty, its punishments must be drastic so as to be deterrent. Where the army is in the field engaged in active hostilities or occupying hostile territory the military commander must have power to act swiftly, to deal during the hostilities with violations of laws of war arising out of the hostilities and during the occupation with any crimes against the occupying troops arising out of the occupation. He cannot trust these matters to the courts of the occupied country even if some of them are

open and functioning since the sympathies of the judges will be with the persons committing the wrongs and conviction may prove impossible. So he has no alternative except to set up his own army courts and commissions. But there is no such justification in domestic territory such as the Philippine Islands not under martial law, long after hostilities have ceased and while civil courts are open and functioning to try civilians, Japanese or otherwise, unless it is specifically shown by the Prosecution that these persons who are now alleged war criminals were accompanying or serving with the Japanese army. Our troops are no longer in danger from this accused. If he is guilty of a crime he should be punished but there is time and place to prove it and it should be proved beyond a reasonable doubt before he is punished. My contention at this time is that the accused is a civilian, should be tried in a Philippine court for violation of the laws of the Commonwealth of the Philippines and those courts are now open and functioning. The fact that no attempt to exercise such summary authority has ever been made by a military commander in domestic territory not under martial law would indicate that no such authority ever existed. It must, if it exists, stem from the President as Commander-in-Chief. It has never been expressly delegated by any president to any military commander in domestic territory not under martial law. It should not be implied.

And we contend that there could be no express grant of such authority by the President since the President himself has no such authority.

All the arguments against an implied grant of such authority are applicable to an express grant. The fact that it has now been expressly delegated to any military commander except to enforce military government or martial law would tend to indicate that it did not exist. One of the fundamental differences between this case and the Quirin case (317 U. S. Report, page 1) remains, and that is, that at the time that the President's proclamation was issued, we were engaged in active hostilities, waging total war, and it was of the utmost importance that examples be made and that the saboteurs be sentenced to death in order to deter other enemy belligerents from attempting to penetrate our defenses and destroy our war potential. It is true that peace has not yet been declared and that we are occupying Japan. But this is the Philippines, domestic territory, not under martial law, active hostilities have ceased, the civil courts are open and functioning, and to quote again from the decision in the saboteur case: "Constitutional safeguards are not to be disregarded in order to inflict merited punishment on some who are guilty."

The letter setting forth the regulations governing the trials of accused war criminals and the letter subject: Trial of Tetsuo NAITO which was read into the record in this case at the arraignment are both under the letter head of General Headquarters, Supreme Commander for the Allied Powers. The regulations state that those accused of war crimes will be tried by Military Commissions under the authority of the Supreme Commander for the Allied Powers. So it is evident that such authority must come from such Allied Powers. Who are those powers? Allied Powers.

It needs no argument to prove that there are at least four, namely: the United States, Russia, the British Empire, and China. Many other countries declared war against Japan. General MacArthur has acted as Supreme Commander for all our allies since the surrender of Japan. There is nothing in this record which shows any grant of authority to him from any of our allies to try war criminals and especially a civilian.

We further contend that this record must show a grant of authority by our allies if General MacArthur purports to act for them. This commission is a court or tribunal of limited jurisdiction and the jurisdiction of a court of limited jurisdiction is not to be presumed; it must be shown in the record.

If the Supreme Commander for the Allied Powers, as such has a grant of authority either express or implied from any of our Allied Powers to appoint this and other military commissions. Then that grant of authority whether in the form of treaties, agreements or other documents, either written or oral should be produced by the Prosecution and introduced as a part of the record in this case along with the two letter orders previously referred to in order to confer jurisdiction upon this commission to try the accused, a Japanese civilian, who has not been shown to be acting with or accompanying the Japanese army.

In this regard it is respectfully requested by the Defense that the Commission order the Prosecution to produce the grant of authority, if any, under which the Supreme Commander of the Allied Powers is purporting to act.

The rules and procedures under which the military commission is purporting to act, that is the Letter of 5 December 1945, denies the petitioner a fair trial guaranteed by the Constitution of the United States and the Constitution of the Philippine Islands, and it violates Articles 25 and 38 of the provisions of Laws of the United States and the Philippine Islands. For example, this directive permits the admission of depositions and hearsay evidence, and throughout trials which have been held before these and other commissions, the Commission has admitted such evidence.

Article 25 of the Articles of War prohibits the introduction of depositions by the Prosecution in capital cases. This article specifically sets forth this prohibition applies not only in court-martial proceedings, but also to proceedings before a military commission, which this is. This is one of the few instances in which an Article of War by its very terms refers to "military commissions" and it is in no wise extraordinary that it does so, for it is one of the most firmly founded principles of American justice that the accused in a capital case, whatever his nationality, should have the opportunity to openly confront the witnesses against him and to cross-examine them on their testimony.

In accordance with the said directive, the commission has persistently ruled throughout those trials that hearsay evidence was admissible.

"The President may by regulations which he may modify from time to time prescribe the procedure, including modes of proof in cases before courts-martial, courts of inquiry, military commissions, and other military tribunals, which

regulations shall insofar as he shall deem practicable, apply the rules of evidence generally recognized in the trial of criminal cases in the district courts of the United States, provided that nothing contrary to or inconsistent with these articles shall be so prescribed; provided further that all rules made in pursuance of this Article shall be laid before the Congress annually."

Although the President, in the Manual for Courts-Martial has by executive order prescribed the procedure, including modes of proof, in courts-martial cases, he has not taken any action prescribing procedure and modes of proof before a military commission, particularly this military commission. In the absence of such action by the President of the United States, it appears to be the clear intent of Congress that the rules of evidence generally recognized in the trial of criminal cases in the district courts of the United States should apply.

Such rules would prohibit the introduction of hearsay evidence. The directive upon which these commissions based their action in admitting hearsay and other inadmissible evidence stems from the Commander-in-Chief, United States Army Forces, Pacific, but was without authorization from the President of the United States or the Congress of the United States. Furthermore, the rules of procedure and evidence governing this trial are ex post facto and as such are violative of the Constitution of the United States and the Constitution of the Philippines. Wharton's Criminal Law, Volume I, states: "A statute however subsequent, may change the mode of Prosecution provided the defendant's rights are not thereby materially

impaired." Under the rules governing this trial the accused rights are materially impaired. Hearsay evidence was admitted. In fact the accused is placed in such a position that it is almost impossible to prepare a defense.

The jurisdiction of this Commission is based upon the contention that the accused is a war criminal and not a prisoner of war. Just when did the accused cease to be a prisoner of war? Every man is deemed innocent until proven guilty. Therefore, the accused is not a war criminal until such time as he is found guilty of violations of the Laws of War. Until such time as a legally constituted commission renders a decision, the accused remains a prisoner of war and is entitled to all the rights thereof. The accused cannot be summarily convicted in order that this Commission might have jurisdiction to try this case.

For these reasons the Defense respectfully moves that this case be dismissed for lack of jurisdiction.

COLONEL CHASE: I presume that this motion by the Defense catches the Prosecution more or less by surprise. A motion of this nature normally should be made at the beginning of the proceedings. The reason why it was postponed to this time I do not know. Without committing the Commission in any way to consider this motion at this time, but before withdrawing to consider the possibility of entertaining the motion, the Prosecution undoubtedly will want to argue. Is the Prosecution prepared to argue, or would you like to have a recess to prepare your argument in rebuttal?

CAPTAIN ROWE: I am prepared to argue. I do not intend to have any more delay in this case than necessary. I will argue the motion but I will reserve the right that if in the course of my argument I need further opportunity to check the law on certain points raised by the Defense, I will then request a short recess to give me that opportunity, but I think I am prepared to meet the issue now.

COLONEL CHASE: The Commission will adjourn to the counsel chamber and discuss at this time merely the matter of whether the motion is to be entertained at all.

WHEREUPON, at 1325 hours the Commission recessed until 1335 hours, at which time the proceedings were as follows:

COLONEL CHASE: The Commission will be in session. The Commission has decided to receive the motion of the Defense and invites the Prosecution to submit arguments in the matter. Are you ready to proceed?

CAPTAIN ROWE: I am ready to proceed, sir.

COLONEL CHASE: You may proceed.

CAPTAIN ROWE: Let the record show that all members of the Commission are present, the Accused is present together with his

duly appointed and chosen Defense Counsel and the Japanese Interpreter of his choice. The Prosecution is ready to proceed.

Sirs, the Defense has presented at this time a motion to dismiss on the grounds of jurisdiction. The argument of the Defense all resolves itself under one question of law, and that question is whether the military commission has jurisdiction over a civilian. All the other points raised in connection with proof and the hearsay rule and evidence have already been decided under rules set down by the letter, General Headquarters Supreme Commander of Allied Powers, dated 5 December 1945 already included in the record, subject "Regulations Governing Trials of Accused War Criminals".

In order to go into the element of jurisdiction we will first find out the authority of the military commission. The Defense has presented a fact about Articles of War. In this trial, and trials before the military commission over persons who are not prisoners ofwar, the Articles of War do not apply, and for my reference to that I cite the case in Re General Yamashita, the Majority Opinion, which has already been decided on jurisdictional points by the Supreme Court of the United States. To quote to the best of my knowledge, the Supreme Court of the United States has decided it will not interfere with the jurisdiction of a military commission, except in one case, and then they said they may interfere and that is only in the case of a writ of habeas corpus. To the best of my recollection the case of General Yamashita went to the Supreme Court on that jurisdictional question by a writ of habeas corpus. That decision is now final and a military commission has the authority to try war crimes committed by war criminals.

We next must determine, in order to decide the jurisdiction of a military commission, is the accused a war criminal; did the accused commit a war crime during the time of hostilities between the United States and its Allied Powers, against Japan and the Axis Powers. If those two questions can be answered in the affirmitive, the military commission has jurisdiction. In order to determine that fact we must analyze the evidence adduced. It is true the accused in this case is a civilian, a Japanese civilian, but, Sirs, what constitutes a military commission? I refer to Winthrop's Military Law and Precedents, second edition, volumes one and two, page 835, subject, "Constitution of the Military Commission". Reading down, it says, "The President as a Commander-in-chief may, of course assemble military commissions as he may assemble courts-martial."

"The President, as Commander-in-chief, may of course assemble military commissions as he may assemble courts-martial. Commander of 'districts' have sometimes and legally under the general law of war and military government, convened these tribunals, though their commands have been less than a brigade, but such instances are rare."

Mind you, Commanders of "districts", that is a very important word. Why is the commanders of districts so important? By virtue of the war powers granted the President of the United States, the functions of the United States Supreme Court are temporarily suspended with reference to judicial action between belligerents. We must look to treaties between belligerent countries to determine what rights exist. In this war, Japan never signed any treaty with the United States. Japan did agree to comply with the Geneva rules of war and Rules of Land Warfare. It was merely an oral declaration. When a state of war exists, an emergency exists, and, when an emergency exists political powers are suspended and the Commander-in-Chief, who is the Chief Executive of the United States, sets down the rules, orders, and regulations by which the country will carry out the policies of war.

In this case the Commander-in-chief of the United States is responsible for the acts of all the United States Armed Forces, all over the world. For this reason the President of the United States broke down the areas in which World War II took place into "districts" and in each district he delegated the power to carry on the war, and necessary military judicial jurisdiction to a full general. In the Pacific Theater,

this power was delegated to the Commanding General, General MacArthur. He is the Commanding General of all the Pacific Theater. Then as I said, commanders of "districts" have sometimes and legally under the general law of war and military government convened these tribunals known as Military Commissions. It is recognized in international law and approved. Therefore, General MacArthur has the right and authority to convene this Commission. General MacArthur further broke his "district" down for purposes of strategy, necessity, and to carry on an expeditious war, into local districts of which AFWESPAC is one. As Commanding General, he may delegate the administrative authority to the Generals in that sub-district to appoint Military Commissions, for the purpose of trying war criminals who committed war crimes. For this reason, the jurisdictional argument that the Commanding General has no authority to appoint a Commission must collapse. This is only one argument, gentlemen.

Let us go to the next point. What the Defense said is true. If the Accused had been a prisoner of war at the time that he committed these acts, he comes under the Articles of War. But the Articles of War do not apply in this case because this crime was committed prior to the accused becoming a prisoner of war; and if he committed this crime prior to becoming a prisoner of war, he must take the consequences of his acts, if he took up arms against the United States or its Allies as a civilian or if he worked in conjunction with the enemy to help defeat the Allies in their mission; he lost any of his rights as

a civilian non-combatant; he destroyed his privilege as a civilian who is a neutral. He lost the privileges of a civilian which the United States Government and its Allies must protect.

For the commission of a treacherous act as in this case, the Defense makes the contention that there was no proof presented, "that the Accused acted in conjunction with the enemy against the Allies". The proof submitted by the prosecution was uncontested and under cross examination was never destroyed. First, the Accused was seen in a Japanese uniform. Secondly, the Accused was carrying a saber, the authority of the Japanese officers. The Accused had soldiers under him and he directed the activity of these soldiers as their leader. Testimony has been presented that the soldiers of Japan carried out the acts directed by the Accused Naito. One step further, Naito was the President of a Japanese society. Witnesses testified that nobody may become a member of that Japanese society except Japanese who will voluntarily take up arms against the United States. What was this society? It was no more than a similarity to the Home Guard in the United States. They were the last leg of defense. They all had arms. Filipinos weren't permitted to have arms; Filipinos had no right to have knives, but this society did! Naito came into that house with a saber. You heard the Defense in a gruelling cross-examination of Susimo Companiado, where the Defense, not the Prosecution, had him describe in proper exactitude the saber which Naito had, with which he killed Mrs. Torres. He killed

Mrs. Torres, was that testimony disputed? Never! Was it broken down on cross-examination? Never!

Now, have we got jurisdiction of this case? I will again cite the law. Winthrop's Military Law and Precedents, Volumes 1 and 2, page 838, which takes in the question of jurisdiction of a Military Commission. (reading)

"As to persons. From what has heretofore been said in regard to the application of the laws of war to enemies in arms, and their operation under a state of military government or martial law, it will have been seen that the classes of persons who in our law may become subject to the jurisdiction of military commissions are the following: (1) Individuals of the enemy's army who have been guilty of illegitimate warfare or other offences in violation of the laws of war; (2) Inhabitants of enemy's country occupied and held by the right of conquest; (3) Inhabitants of places or districts under martial law; (4) Officers and soldiers of our own army, or persons serving with it in the field, who, in time of war, become chargeable with crimes or offences not cognizable, or triable, by the criminal courts or under the Articles of war."

In other words, our own soldiers if they committed a crime in violation of the Articles of War may be tried by a Military Commission. Now, gentlemen, in view of that law let us examine the situation in the Philippines at the time the Accused committed his crime. The Accused committed this crime about May 1945. During May 1945 the Japanese were in retreat. In the course of their retreat they had to destroy every Philippine citizen so that when the American Forces

came in the American Forces would not know in what direction or place the Japanese Army retreated into the hills. Why is this important, gentlemen? Because Naito, the Accused in this case, retreated with the Japanese Army. In his retreat he had one motive in mind, to carry out the orders of the Imperial Command -- destroy the civilians and destroy the Filipinos. Now, what was the state of the Philippine Islands at that time? Did they have a civilian government? No! Did they have a military government? No! Did the Japanese civilian government function? No! Were our forces in there and did they take control? No! Our forces were coming in; in other words, Biao, Guianga, Tubbok, and Talomo, which are up in the hills, were all under American bombardment. The non-combatant civilians scattered in all directions for their own protection. The President of this Japanese association assisted in scattering the civilians, how? By killing them and destroying them. So what happened? We have a section of a country, where there is no law; there is a war; two enemies facing each other, civilians caught in between. The only hope the refugees had was to hope for mercy from the Japanese and to hope for the mercy of the Americans. They were at a loss.

What unit or what part of the judicial government had jurisdiction to try this judicial problem? The Commanding General of the "district", in which that little piece of land is located. General MacArthur and under his authority he has the right to try every war crime committed until either an American government is set up there or a Japanese government is set up, because, mind you, the Philippine Commonwealth had no government. They were in control of the enemy, as a conquered country. For this reason, as to "place", the Military Commission has jurisdiction to try a war criminal and any war crime committed in this area.

Now, gentlemen, let's go to the next point: The question was raised by the Defense that this court has no jurisdiction over any offense committed by the Accused; and resorts to the Supreme Court of the United States for its authority; I already have clarified the question as to what tribunal has jurisdiction over an area that is not under any government. One of the war powers must have jurisdiction, and the war power that has that jurisdiction is the conquering war power. We conquered and we have the right to determine and test the war crimes committed in that locality. Before I go further into this problem of defense, there is one important point which we must take judicial notice of, on or about August 15, 1945 the Japanese Imperial Government surrendered; and how did they surrender? Unconditional surrender! Under the rules of warfare, by unconditional surrender, the conquering country has the right to set down any rules, any rights, any

procedures necessary to carry out the judicial protection and humane protection of the civilians in that area and the same right to punish any enemy that has violated the rules of war.

What happened here? Whether Naito was a civilian, whether Naito was a soldier, whether Naito was a lord, or whether he was a king, the same rule applies to an emperor or an ordinary peon who works in the field. If anyone violates the law, the military commission has a right to try it. That was set up by International Law, and The United States Surpeme Court will not say anything about it because that province in an emergency falls upon the executive power, not a judicial power.

Now for what offenses does this tribunal have jurisdiction to try the Accused? I cite the same Military Law and Precedents, page 839, subject, "Offenses". To come down to the point, "In the simpler system matured in our recent war" — and they refer in this case to the war with Mexico — "both jurisdictions were, as has been seen, united into one court for which was preferable retained the name of military commission." That was where they combined a court-martial with an ordinary civilian court and decided to call it a military commission to try offenses after the conclusion of the war between the United States and Mexico. "The offenses cognizable by military commissions may thus be classed as follows: (1) Crimes and staturoty offenses cognizable by State or U.S. courts, and which would properly be tried by such courts if open and acting;" Mind you, "if open and acting." At the time of this offense, what courts were open and acting, when this crime was committed? None. You have to rely upon the powers granted to the Commanding General for the retention of law and order, and the tribunal. To judicially operate is the military commission appointed by the general.

"(2) Violations of the laws and usages of war cognizable by military tribunals only;" In other words, it is the military commission that only has jurisdiction in the cases of violations of laws and usages of war.

"(3) Breaches of military orders or regulations for which offenders are not legally triable for court-martial under the Articles of War." This accused falls into that category. To go into the elements of the offense is not necessary at this time, since this is an argument as to the jurisdictional question. That I will reserve for my summation and argument at the close of the case, if the Commission should rule against the defendant's motion. But we are not through yet.

The Defense made certain statements. Although they are true in their import, have no application to this case. He cited a case, I do not just know the citation, but he cited the case in his argument in which he referred to the case as a subject dealing with saboteurs. It is true, the case is sound in its law, the case is sound in its purpose, but it has no application here because the case of saboteurs applies where you have civil courts, the United States, in its geographical area as decided in the United States District Court, which is not affected in this war had the right to try that case, but did he refer at any time to the Yamashita case, General Yamashita? No. I will cite in a general summary something about the Majority Opinion in the Yamashita case. All that the Supreme Court says is that the accused has one right, and that right must be protected by the Commission, the Defense and the Prosecution, and that is, "the accused has the right to make a defense." That is all. Is the accused a citizen of the United States? No. Has he got any privileges under the Constitution of the United States? No, that is a privilege granted to the citizens of the United States and is something that the United States Government must protect because that Constitution must be strictly construed by the United States Supreme Court to protect the citizens and people of the United States of America and its forty eight states. That is all. The accused

cannot come under that protection, so the accused must come under the protection of what? Treaties. The Defense has failed to show any treaty between the United States and Japan in connection with war crimes or war criminals or people who are not military persons. I already showed the jurisdiction where even though the accused is a civilian, this military commission has jurisdiction. I already brought out in the early part of my argument that the Articles of War do not apply. It was definitely decided I believe why they don't apply. under the Majority Opinion of the case of General Yamashita. not a prisoner of war; he was a civilian taking active duty and active arms against the United States in conjunction with Japan. So what was he? What was he a member of? He was a member of one of the auxiliary forces of Japan known as the Japanese Society of which he was the president, and therefore they come under the military jurisdiction of this tribunal. They are a fourth element.

Now the Defense has presented that military commissions have no authority to try a Japanese civilian. He said that he should be tried by a Filipino court. That act was committed when the Philippine Government was not in existence. It was a conquered country of Japan, being reconquered by the United States and until reconquered and now Japan concedes that, the Philippines had been reconquered, there was no Philippine law and therefore the Philippine court at the present time has no jurisdiction over those crimes except General MacArthur, who acts as the executive head for the Commander-in-chief of the United States forces.

The Defense contends that the President of the United States has no authority to grant jurisdiction to military when martial law is in effect and when civil courts are in operation. That argument must already collapse. It has already been answered. With one

exception, there has been no martial law here until the conquest by the Americans and no civil law because the Philippines were not in existence as

Third, the Defense contends General MacArthur was not granted express authority by the Allied Powers to convene this Commission. The Commission must take judicial notice of the decision already rendered in the case of General Yamashita, where it has been decided he has that power. The Defense contends Article 25 of the Articles of War states that military commissions may not use depositions. The Defense contends the President of the United States has not prescribed the rules of evidence to apply in this commission. Granted. Suppose the President did not. Until rules are set down, every commission may set their own rules and the commissions are guided by their conscience and guided by the rules of evidence all over the world. They only have one great responsibility, to try all the facts, to truly examine all the facts carefully and protect the right of the accused in allowing him to put in a defense. If the commission has complied with that, their jurisdiction and their function is complete. The Defense contends that the President's directive is ex post facto. The Defense goes back to a stage where peace reigned and civilian government is again taking a hand. But we are not even at peace at the present time. Did the Defense point out where a peace treaty was signed? No. It is only a temporary cessation of hostilities by which Japan may or may not carry on the war. That is only an armistice and is unconditional, and therefore the ex post facto rule does not apply. We are now still in the status we were in in 1941 when war was declared. We are still in a state of war, excepting a temporary armistice was signed until adjustments are made and until adjustments are satisfactory arms may be taken up and arms may be taken

up without recourse to either country. Suppose Japan takes up arms immediately. What court has jurisdiction? Have we got a civil tribunal here? No, they are just commencing to function. We have given certain provinces back to the Philippines to be controlled by their political government. Certain provinces are still controlled by the United States. They had never had jurisdiction. At the time of the offense in question there was no Philippine court.

The Defense contends that the Accused is not a war criminal but is a prisoner of war. That answer is left to prove later on in my summation, and the only question presented through the witnesses, both of the Prosecution and the Accused, is whether the Accused is permitted to put in a defense. The Prosecution never stated that Naito, was a prisoner of war. The Prosecution contends he is a war criminal. That is a different status. A prisoner of war is under the jurisdiction of the conquering power and subject to the rules and Articles of War as set down by the military.

The Defense contends that there is no power to appoint a military commission to try a Japanese civilian living in the Philippines without delegation of power from the President. I already answered this question. I will not go further into the argument. He is a civilian who definitely took arms against the United States.

Fifth, the Defense contends that powers are not implied, they are directed by the Commander-in-chief of the U.S. Army, which may be delegated to a full general in the Pacific under the Commander-in-chief. That is true. Powers may not be implied, but in time of war when civil government loses ints functioning power, a military government must direct the activities itself and have the authority. The executive arm of the government, the President of the United States, to control all United States Army forces, and he as Commander-in-chief may direct

all the activities and delegate necessary powers to carry on the war through his subordinate agents, and he may direct by implication that the Commanding Generals of his districts shall carry out all that is necessary to protect the civilians and destroy the enemy, and by implication he has the right to set up any military tribunal to test the acts of certain people for a judicial consequence. General MacArthur carried out that authority. That authority was approved by the President of the United States as Commander-in-chief, and that authority has definitely been decided by the United States Supreme Court that they have no authority to question the jurisdiction in the Yamashita case, except that they may entertain the question on a writ of habeas corpus.

The Defense contends that only four powers declared war on Japan, and he named them, United States, Russia, Great Britian and China. He did give a partial fact of truth --

LIEUTENANT McCULLOUGH: At this point I object to the statement of counsel as being outside of the realm of argument and outside of the realm of evidence in the case.

CAPTAIN ROWE: I merely said--and I have got it down here--the Accused--

LIEUTENANT McCULLOUGH: I have been in the army a long time and studied history. I know that there were more than four powers --

CAPTAIN ROWE: Here I have got it down, that the Defense says there are four powers declared war against Japan. Do you retract that?

LIEUTENANT McCULLOUGH: No, I will get the record.

WHEREUPON, Counsel left the room and returned with some papers.

LIEUTENANT McCULLOUGH: To prove my argument, I will quote again from my statement which I made, that it need no argument to prove

there were at least four nations -- not only four, but at least four.

CAPTAIN ROWE: All right, I will retract my statement where I said only four, and I will answer the Defense argument where it says "at least four powers declared war against Japan". The Philippine Commonwealth fought against Japan and they were conquered. They declared war. They didn't declare war as a first party. Japan declared war on the Philippines. By the Philippines resisting, the Philippines declared war against Japan. What about Canada, what about Australia, what about France, what about all the countries, except the Axis Powers and Switzerland, which was a neutral country? They have military commissions. Anyone may sit on a military commission. It does not have to be a military man.

He may be a civilian, he may be a military man, he may be a Russian, he may be anyone who was an ally of the Allied Powers. The fact that we have four military men on this Commission does not say they have no military jurisdiction or that the United States alone is testing this. The decision of this military commission is the decision of the United Nations. It will be a decision as a precedent for all military commissions . You are a part of the innumerable military commissions. Your decisions, your precedents go down into military history as a basis for International Law, military law during a time of war. We are not at peace yet.

As further guidance for the commission in the course of their study and the application of the principles of rules of evidence and rules of law, the commission has the prorogative of applying any rule of law, whether of the United States, Europe, any rule of law which will propound justice, bring forth a true digest of the facts, and that other commissions may act upon.

Now what was the reason for such a broad power given to a commission? Because it was realized in the course of human conduct and the course of the military that officers of the armies are well trained elements to digest facts in of justice. They are well trained in the analyzation of facts. They are well trained in knowing how to assimilate and digest facts, and they are so trained that they can apply a conscionable rule.

A conscionable rule that will produce usefulness, humaneness and general protection to the civilians who do not take up arms against either country. For that reason their judicious ability in analyzing facts gives them that prerogative, and that is why a military commission is not strictly bound by the strict rules of law as established in a federal government or in a state government where peace reigns.

Gentlemen, in conclusion, answer was made to all the elements of the Defense' jurisdictional question. This jurisdictional question had been settled by the Supreme Court of United States only through habeas corpus. The President has the authority, the general has the authority to appoint this Commission, and the general may delegate the administrative authority to his subordinate in this district, General Styer. Thank you.

COLONEL CHASE: The Commission will take a short recess.

(Short recess)

COLONEL CHASE: The Commission will be in session.

CAPTAIN ROWE: Let the record show that the Commission is all present; the Accused is present with his duly appointed Defense Counsel and counsel of his own choice, and special Japanese interpreter; and the Prosecution is ready to proceed.

DIEUTENANT McCULLOUGH: If the Commission please, I would like to make a few short remarks in answer to the Prosecution's argument on the question of jurisdiction. First, I want to point out under federal procedure, or procedure under most states the question of jurisdiction can be raised at any time, either before the trial, during the trial or after the trial has been completed. It is the only question in law which can be raised that way. The Commission has already ruled on that. We are within our rights to raise it at this point. Now as to the rules under the Letter Order 5 December 1945 I merely want to point out to the Commission that under federal statute and under Article of War 28, that they are reviewable by Congress annually. Now, there was a remark made as to why the Defense did not refer to the Yamashita decision. The Defense is well aware of the decision in the Yamashita and Homma cases and I would like to point out to the Commission at this point,

three sentences of the Yamashita case. First,"we consider here only the lawful power of the Commission to try the petitioner for the offense charged." They were considering only the petitioner, Yamashita in that case and him only. The second sentence, "With these governing principles in mind we turn to the consideration of the several contentions alleged to establish lack of authority in the Commission." We are not here concernod about the power of a military commission to try civilians. See ex parte Milligan, 4 Wall page 2, 132; Sterling vs. Constentine, 287 U.S., page 378; ex parte Quirin, 317, United States, page 1. Now I wish to particularly point out to the Commission that the question of citizenship was never raised in the Yamashita case; we are raising it here in our argument on the question of jurisdiction. Further in the Majority Opinion there is this sentence, "We do not make the laws of war, but we respect them so far as they do not conflict with the commands of Congress or the Constitution. There is no contention that the present Charge, thus read." Now, in our position of jurisdiction, we are contending just that they do not conflict with both the laws of Congress and the Constitution; further, I would like to point out one paragraph of the opinion, or the opinion set forth by Justice Murphy one dissenting justice in that case. He stated in the second paragraph, "The Fifth Amendment guarantee of due process of law applies to 'any person' who is accused of a crime by the Federal Government or any of its agencies. No exception is made as to those who are accused of war crimes or as to those who possess the status of an enemy belligerent. Indeed, such an exception would be contrary to the whole philosophy of human rights which makes the Constitution the great living document that it is. The immutable rights of the individual,

including those secured by the due process clause of the Fifth Amendment, belong not alone to the members of those nations that excel on the battlefield or that subscribe to the democratic ideology. They belong to every person in the world, victor or vanquished, whatever may be his race, color or beliefs. They rise above any status of belligerency or outlawry. They survive any popular passion or frenzy of the moment. No court or legislature or executive, not even the mightiest army in the world, can ever destroy them. Such is the universal and indestructible nature of the rights which the Fifth Amendment recognizes and protects when life or liberty is threatened by virtue of the authority of the United States."

I do not believe it is necessary to point out here that the able counsel for the Prosecution has gone far beyond the realm of the law and the scope of the evidence in this case in his argument. I think the Commission is well aware of that. That there are times when he, for example stated that this Japanese Association was a home guard. There is no evidence of that sort in the record. It was never intimated in this record. Another thing, in comparing the record on page 36, the question was asked, " How was Naito dressed?" And th answer, "He was dressed in blue, navy blue with boots." "What kind of a hat?' " Japanese hat." It doesn't say whether it is a hat of a civilian or a soldier. Certainly a navy blue with boots is not the dress of a Japanese soldier. Another point we would like to raise is this: That the Accused is not being tried in May 1945; he is being tried in March 1946. The Court of the Philippines are open and functioning and the crime which was alleged to have been committed is the crime under the Commonwealth of the Philippines; therefore, in conclusion we again renew our motion on the question of jurisdiction.

CAPTAIN ROWE: The Prosecution would like to answer the minor arguments just raised by the Defense. They brought up the fact of three points raised by the Supreme Court In Re: Yamashita. I believe the Defense said that they were trying to determine the jurisdiction of the offense charged.

It is true, under a writ of habeas corpus, that is one of the tests of the court. As I said the Supreme Court reserved that right. They said they may, at any time hear a motion for a writ of habeas corpus. General Yamashita was brought up on just such a writ, a writ of habeas corpus. The only test is the test of jurisdiction and the test whether the court has the right to detain a man of his liberty. That is the law.

Now, Gentlemen, in this case we have no habeas corpus. We have the actual trial. If the Defense decides to try the case further, to take it higher, that is his privilege; we are to try the case here on the facts, to test a jurisdiction which we have already argued to completion leaving the decision in the hands of the Commission.

Another point raised by the Defense is that the Supreme Court of the United States did not question the authority of the Commission over civilians, over a military man. That is true, but I have already pointed out in my argument on jurisdiction that a military commission has jurisdiction in an area not only of military men, but of "inhabitants" civilians who take up arms against the United States. Then, as a guide, to assist this court let me point out a fact that the defense read to you, part of a decision of the opinion of Justice Murphy, but throughout that whole section that he quoted, Justice Murphy did not quote law; we must distinguish

between law and dictum. Dictum is not law. Probably Justice Murphy was upset thinking a question of jurisdiction may be raised but what is the law? The law is the majority opinion. It is a law by which we are bound and guided; it is the law under International law, under the writ of habeas corpus. Justice Murphy in his dictum was expressing himself, the basis of depriving the liberty of a man for which the writ of habeas corpus is brought up. He did not say anything in that dictum, and he did not bring out the purpose of law as to jurisdiction. So, Gentlemen, this is a point of guidance that was just referred to you to accept and act upon when you are in your chambers deliberating the case.

The Prosecution believes that the law is settled. This military commission has jurisdiction over a civilian. The reason for jurisdiction has been pointed out; therefore, I request that the motion be denied and the case proceed and have the Defense put in their defense.

COLONEL CHASE: Does the Defense have anything further?

LIEUTENANT McCULLOUGH: Nothing further.

COLONEL CHASE: The Commission will adjourn briefly for a conference.

(WHEREUPON, the Commission adjourned for an executive session.)

COLONEL CHASE: The Commission will be in session.

The Commission is of the opinion that the general question of the right of the Commanding General AFPAC and the delegation to the Commanding General AFWESPAC for the appointment of these courts and ordering of proper Defendants before them, these Commissions has been clearly settled once and for all by the decision in the Yamashita case. As to the subsidiary contention of the Defense that the Accused was improperly brought before this Commission because of a civilian status, the Commission is of the opinion that a great deal of evidence which has been brought before it to the effect that the Accused was in fact acting in concert with the Armed Forces of Japan with arms in his hands.

The motion of the Defense is denied.

LIEUTENANT WATERS: At this point the Commission please, the Defense rests.

CAPTAIN ROWE: Does the Defense care to submit any argument?

LIEUTENANT WATERS: Yes, we do at the proper time. We are waiting at this time, if the Commission please, to see if the Prosecution has any further evidence.

COLONEL CHASE: Does the Prosecution have anything further?

CAPTAIN ROWE: The Prosecution rests.

LIEUTENANT WATERS: With the permission of the Commission, we will then go into our final argument.

It is not the purpose of the Defense Counsel to use the final argument for the purpose of delving into the record of the testimony and the evidence that has been placed in the

record at this hearing.

We feel that the Commission is well suited by experience and intelligence to realize what discrepancies, what omissions have taken place among the witnesses placed on the stand by the Prosecution. We will use what they have heard, what they have seen, in consideration and in passing upon the competency the reliability, the veracity and integrity of the said witnesses. However, we would like to point out one or two major omissions in the Prosecution's case. First, there has been no proof tendered to this Commission of a corpus delicti or that any of the alleged victims of the particular incident set up in the Charge and Specifications was actually killed, with the probable exception of Aurora Torres; but in the case of Aurora Torres, there is nowhere in the record of the evidence and testimony any positive identity of the bones and skeleton allegedly found by the witnesses. That the same were actually the bones and skeleton of Aurora Torres. There is further lacking in the testimony any proof or evidence that any one of the alleged victims, including Aurora Torres, actually died from or directly or indirectly as a result of any wound or wounds administered to them individually or collectively by the Accused, or any other Japanese civilian or members of the Japanese Armed Forces acting independently or in collusion. Further, that the testimony only shows that Naito, if at all, was president of a Japanese association. It does not show that the association mentioned in the testimony was in any means or manner the same Japanese Neighborhood Association as alleged in the Specifications, or that it was in any way, means or manner connected with the said Japanese

neighborhood association. Further, that there is no proof whatsoever in the evidence and testimony that the Japanese neighborhood association was in any way, means or manner connected with the Japanese Armed Forces in either command or subservient capacity, or further acted in any way, means or manner to aid or abet such armed forces or that the members of said Japanese association were persons accompanying or serving with the Army of Japan. Further, for the sake of argument, and only for the sake of argument, that the Accused, a civilian, did commit crimes as alleged. There is no evidence or testimony that shows or tends to show that the Accused, a civilian, was connected and acting with Japan in such acts or commission as alleged in the Specifications.

Gentlemen, it is well placed in law, the Prosecution must prove beyond a reasonable doubt not only the guilt of the Defendant, but each and every allegation made in their indictment of the Accused. Calling this to the attention of the court, we ask a verdict of not guilty in the case of the people of the United States vs. Naito. I thank you.

CAPTAIN ROWE: Gentlemen, before I go into my summation there is one argument to present in answer to the contention of the Defense. The Prosecution contends that they have proved a prima facie case. Once a prima facie case has been made out by the Prosecution it is the duty of the Defense to either set up a defense in mitigation, or under his general denial to establish that he in no way is the person responsible cited in the Specifications 1 and 2.

Under Specification 1, 2, and the Charge, the Accused is charged with the crime of murder in violation of the laws

of war. Murder is an unlawful killing, with or without violence Unlawful means without legal justification or justice.

In this case the Prosecution has established a murder of four people. The Prosecution has established that the Accused was the one responsible and the one who induced the crime and he is just as responsible as the man who thrusts the knife into a person, even though he does not participate in the act itself. Has the Accused given any evidence here in justification or in excuse? No. In fact, the Defense gave each witness on the stand a rigid cross examination, especially Susimo Companiado who actually saw the killing and the death of three innocent people. Then, gentlemen, as a guidance under the general rule, any act is unjustifiable if manifestly/committed beyond the scope of authority, and such that a man of ordinary sense and understanding would know to be illegal. The Accused in this case is a man of common understanding. The Accused in this case is a man of ordinary sense. The Accused in this case knew that there was a state of war. The Accused in this case is a Japanese that took arms against the United States and the inhabitants -- civilians, and the Accused in this case knew and he directed the killing of those two girls. He knew that was wrong and that it was illegal and the Accused knew that the Japanese soldiers would not do anything until he ordered them to do it. They complied with his orders, because he had the authority.

The Prosecution has established that four people were killed. They died in consequence of an injury; it is true the Defense raised the question of corpus delicti, and I will go into that phase in about one minute. As a result of these

injuries, four people died. Now, let us retrace our steps.

In the afternoon of May 15, 1945, the Accused in the company of soldiers came into the Torres home at Biao Guianga; the soldiers tied the hands of the mother, the youngest brother, Eugenio, and Aurora Torres, and another, and took them outside and killed them. The Accused, Naito, who was the leader, ordered the death of the mother, Eugenio and Amador Concepcion; and he came back to the house and ordered the death of Virginia Torres and Aurora Torres. You heard the testimony of that little girl, Virginia Torres. She saw her sister murdered. Was any excuse given for it? No. Susimo Companiado, known as "Simo" in the record, testified as to the deaths of the mother, Eugenio, and Amador. He actually saw the Accused, Naito, strike the mother on the neck with the saber and then thrust it into her back; she fell down and then Susimo saw the other two Japanese soldiers shoot the other two. The testimony is clear. It has not been broken down under cross examination. The Defense has not come forward to refute it. Those facts must stand as true.

The Accused in this case was clearly identified as the person who actually participated and who was responsible for the deaths. Virginia Torres pointed him out directly; Susimo Companiado, the eye witness to the three killings, pointed him out directly. What has the Defense given in evidence to deny that? What has the Defense given in mitigation or in excuse? Nothing.

Let us see what was going on in the mind of the Accused. He felt that he had authority to kill these people as president of the Japanese association. The Defense has made a statement,

a technical objection that this was not a Neighborhood Association. I want to call attention, I believe the record does show one of the witnesses testified that this was a Japanese Neighborhood Association; this association was divided into districts, and Naito was the president of one of these districts. That was undisputed.

The Prosecution contends that the Accused by his acts, by his control of Japanese soldiers, that he was part of that Japanese Army just as a regular soldier, a reserve officer, or any one else. Now, the Prosecution does not contend that they were a Home Guard. The Prosecution stated in their last argument that it was simulated to a Home Guard in the United States, for that reason, as president, he took the best advantage of his desires in conjunction with the enemy and violated the laws of war -- murder. Therefore, he is a war criminal. He is a war criminal because any act is unjustifiable if manifestly beyond the scope of authority and such that a man of ordinary sense and understanding would know to be wrong.

A question was raised, in connection with the corpus delicti. That was one of the most delicate points raised in this trial. Both the Counsel for the Defense and Prosecution have presented the strongest possible argument for guidance to the Commission in helping them in their decision. The Prosecution in this case did establish the corpus delicti and clearly established through a preponderance of evidence and the only possible evidence under the circumstances of war.

Now, let us see the analization; I want to invite the Commission's attention to the following basis of proof in connection with the corpus delicti, for this reason I cite

American jurisprudence year 1939, Volume 20, Paragraph 151, which says, "Proof of corpus delicti involves the proof that the act itself was done, and that it was done by the person charged." Then, we go on further in clarification to Paragraph 1231, subject: The evidence necessary to establish a corpus delicti; it says, "That the rule laid down by the early English authority that the corpus delicti must be proved by direct and positive testimony has been modified by later decisions. The word of authority now is that direct and positive proof is not essential, and, all the elements may be proved by presumptive or circumstantial evidence. It would be unreasonable always to require direct and positive evidence. Crimes are naturally committed at chosen times, in darkness and secrecy."

What was going on in the mind of the Accused, "I hate that Torres family, when the time comes I will kill them". He did kill them with the authority of the Japanese Imperial Government and his own authority as a member and assisting force in conjunction with Japan in war. But, he committed the crime in a time of war at a place where there was no jurisdiction. He thought he would get away by running to the hills with the Japanese, but he never knew justice would catch up with him.

Let me cite Whartons -- Criminal Evidence, 11th Edition, Volume 2, Paragraph 871, Page 1506 "Death is sufficiently shown by the testimony of a witness that he saw the flash, or heard the report, and that the deceased fell to the ground declaring he was shot, and, that the Accused or his accomplice did the shooting. To establish the corpus delicti by circumstantial evidence facts are admissible to show the impossibility or

improbability of rescue; to show the existence and extent of wounds, and the deceased's commission; and, to show that the wound was sufficient to cause death, and that the party was reported dead." Was the party reported dead in this case? Yes, this was the first killing in Biao Guianga. The people got scared. They scattered; they ran to the hills. In other words, the Japanese had already decided -- the Japanese Army had decided to destroy as they retreated. They were not satisfied with destroying property, but destroying people; destroying the Filipinos. Gentlemen, that is the only inference that may be deducted from the evidence presented by the Prosecution. The court has a broad discretion in the admission of evidence, circumstantial evidence approaching the basis of logical inference relative to the circumstance or reasonably tending to shed light on the issue is admissible. Therefore, the Defense's contention and argument that the proper rules of evidence have not been strictly complied with in this court is for the discretion of the court to determine. It is not essential that the corpus delicti should be established by evidence independant of that which connects the Accused with its perpetration; the same evidence which tends to prove the one also may tend to prove the other, so that the existence of the crime and the guilt of the Defendant may stand together inseparable on one foundation of circumstantial evidence. I have already pointed out that war crimes are manifold in character; thus crimes committed by inhabitants of occupied territory must not go unpunished, even though in the area of the enemy's operation. If the act serves no military purpose, then they must bear the responsibility for their misdeeds. Warfare must

be carried on in accordance with basic consideration of humanity and chivalry. Reverence for right and humanism grew up out of this moral code of nations. Now, chivalrous conduct, soldiers and officers and people must take into consideration the right of the unfortunate situation that the poor civilian must undergo in the course of war. The civilians are caught between a cross-fire and don't know which way to turn; if he takes up arms against one he can be held responsible to the other. The poor Filipinos gave with their lives and blood to the accidental killings by the Americans, and through the deliberate killings by Japanese Army and Japanese Neighborhood Association, through the man such as the Accused.

Virginia Torres who you saw on the stand, is alive because God gave her life; under ordinary circumstances, she should be dead, good and dead, and the Japanese thought so. But no, she was a survivor who was to come before this Commission and tell you the story about the Accused who thought that justice will never catch up with him. Now, he is in a different position, but he is getting a fairer trial than Virginia Torres or her mother received, or Eugenia, or Amador. Did they get a trial? Did they get a hearing? No. It was cold blooded murder. Did they take up arms against the enemy? Did they take up arms against Japan? No. They didn't even have arms, but Naito had arms; the Japanese Association had arms. They were ready to take arms against any Filipino.

Gentlemen, my colleagues, Defense Counsel and myself, the Prosecution, completed our duties as officers of the court. We have presented all the possible assistance to this Commission, elicited all the facts possible to present before

you for decision, study, consultation and ultimate decision.

In arguments, we both drew the possible conclusion from the facts as presented; and we both took special care to protect the rights of the Accused as to allow him to present a complete defense in mitigation or excuse.

to present
One of the rights the Accused has is to allow him/a complete defense.
through
My colleagues and I have got into heated argument, but we, both/argument and discussion have brought out every possible contention for your guidance and assistance. The Accused in this case has failed to establish a defense. The Accused rested with the Prosecution's case. The Prosecution established a case. Why, the Accused cannot adequately account for his actions nor set aside the facts that he killed those mentioned in the Specification 1 and the assault on Virginia Torres in Specification 2. The Accused knows he violated the rules of war and he used the authority given him by the Imperial Japanese Command to accomplish this avid devastation. He was equally a member of an auxiliary force of Japan. The war power, from which this Commission derives its existence, carries with it the inherent power to remedy the evils which the military operations have produced. For that I cite
at page
Stewart vs. Kahn., 11 Wall 493,/503. "In time of war, killing is the practice, when for military necessity. The presumption of death is greater and rules more relaxed than in peace. It is in peace time that killing is the exception, and, rules of corpus delicti will be strictly construed."

Murder is unlawful killing, as I said, and unlawful killing without justification or excuse. Sirs, God and your conscience rest with you to analyze these facts with the assistance given by my colleagues and myself. In the name of the people of the United States of America; in the name of the people of the Philippines who suffered and gave their blood without recourse; in the name of the survivors of all atrocities and in the name of the future peace, the maximum sentence is desired.

LIEUTENANT WATERS: If the Commission please, the defendant has objected to some of the remarks of the Prosecution, especially

unmitigated remarks against the defendant because he did not take the witness stand. It is basic and fundamental law that a defendant cannot be compelled to give evidence against himself. Therefore, it is even stronger fundamental law that a defendant cannot be compelled to give evidence in his own behalf. In all civil jurisdictions in which we have practiced is considered improper argument to attack the defendant on the grounds that he did not take the witness stand. The same holds in military courts-martial and before military commissions. The defendant is given a choice of three things under Article of War 24: First, he may take the witness stand under oath. Second, he may submit to the court or commission an unsworn statement. Third, he may remain silent. It is fundamental that it is not upon the defendant to prove his innocence before a court or a commission, but it is upon the prosecution to prove his guilt and to allow such an attack upon the defendant because of his failure to take the witness stand is to allow the prosecution to attack the credibility of a witness whose credibility has not been placed in issue. Further, such remarks as made by the prosecution are calculated to incite inclimation and bias and prejudice against the defendant. Such remarks and attack constitute reversible error and the defense asks they be stricken from the record and not considered by the commission in reaching their decision in this case.

CAPTAIN ROWE: The argument of the Prosecution. The Prosecution is well aware of the rights of the Accused. The Prosecution was very careful to protect his rights, but all through the argument I made no mention about the Accused taking the stand, but I did say that the Prosecution presented a prima facie case and it was the duty of the Defense to present more evidence against this. This they failed to do. It does not hurt or affect the rights of the Accused.

COLONEL CHASE: It is the opinion of the law member that the rule that no inference from the failure of the Accused to take the stand in his own behalf, is well established, and the members of the Commission are directed to draw no such inference to any such remarks which may have been made.

Has either side anything further to offer?

CAPTAIN ROWE: The Prosecution has nothing further.

LIEUTENANT WATERS: The Defense has nothing further.

CAPTAIN ROWE: Both sides rest.

COLONEL CHASE: It is now approximately 1530. The Commission will adjourn in closed session, recessing the Commission until 1600 hours, at which time I hope we will be able to announce a finding in open court.

WHEREUPON, at 1528 hours, the Commission recessed until 1600 hours, at which time the proceedings were as follows:

COLONEL CHASE: The Commission will be in session.

CAPTAIN ROWE: May the record indicate that all members of the Commission are present, the Accused is present together with his duly appointed and chosen Defense Counsel, and his duly chosen personal interpreter, together with the Interpreters for the Commission. The Prosecution is ready to proceed.

COLONEL CHASE: Due to the fact that there have been some amendments in the Charge, and one of the Specifications, making them rather long, I will read the entire verdict of the Commission in English and will then turn the notes over to one of the Official Interpreters to translate to the Accused.

The Accused and one of the American Interpreters will arise and stand before the Commission.

Ictsuo Naito, the Commission has considered your case in closed session, and by secret written ballot, two-thirds or more of the members present concurring in the findings and sentence finds you of Specification 1 as amended, GUILTY, except the words, "wilfully and unlawfully kill Amador Concepcion, Beatriz Lianga Torres, Aurora Torres, and Eugenio Torres ", substituting therefore the words "wilfully and unlawfully kill Aurora Torres and wilfully and unlawfully attempt to kill Amador Concepcion, Beatriz Lianga Torres and Eugenio Torres", of the excepted words, NOT GUILTY, of the substituted words, GUILTY.

Of Specification 2, GUILTY.

Of the Charge, GUILTY, except the words, "wilfully and unlawfully kill four Filipino civilians and wilfully and unlawfully attempt to kill one Filipino civilian", substituting therefore the words, "wilfully and unlawfully kill one Filipino civilian and wilfully and unlawfully attempt to kill four Filipino civilians ", of the excepted words, NOT GUILTY, of the substituted words, GUILTY, and sentences you to be hanged by the neck until dead.

WHEREUPON, the Official Court Interpreter translated to the Accused.

COLONEL CHASE: The Provost Marshall will remove the prisoner. The Commission will recess, to meet at the call of the President.

WHEREUPON, at 1605 hours, 28 March 1946, the Commission recessed.

AUTHENTICATION OF RECORD

The foregoing 168 pages in Volumes I to II inclusive (together with Prosecution's Exhibit "A", which is attached to Volume I, and Prosecution's Exhibit "B" incorporated into the record on page 88, Volume II, and hereby certified as the Record of the Proceedings of the Military Commission appointed by Paragraph 3 of Special Orders No. 60, Headquarters, United States Army Forces, Western Pacific, dated 13 March 1946; Paragraph 51 of Special Orders No. 61, Headquarters, United States Army Forces, Western Pacific, dated 14 March 1946, in the trial of the United States of America against Tetsuo Naito.

Dated _____ April 1946.

JOHN A. CHASE
Lt. Colonel, (CMP) FA
President and Law Member
of Commission

THIS ACKNOWLEDGES that the above-described Record was submitted to Defense Counsel prior to being certified by the President of the Commission.

CLARENCE L. WATERS
1st Lieutenant, CMP

JOHN E. McCULLOUGH
2nd Lieutenant, TC

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

GHQ, SCAP, LEGAL SECTION, MANILA BRANCH
(Reporting Office)

2085

File Number P-68 Date of Report 3 January 1947

Title of Case U. S. A. vs. Chikanori TABUO

PART A

1. Names and Nationalities of Accused:

Chikanori TABUO - Japanese

2. Nature, Place and Date of Offense:

Murder of a Filipino civilian, at or near Toledo, Cebu Province, Philippine Islands, on or about 2 November 1944.

3. Names and Nationalities of Victims:

Remedio Delicia - Filipino

4. Probable Place and Date of Trial:

High Commissioner's Residence, Manila, Philippine Islands, 2 April 1946.

PART B

5. Place and Date of Trial: High Commissioner's Residence, Manila, Philippine Islands.

Arraignment - 2 April 1946.

Trial - 2 April 1946.

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (A[illegible]n 46) WDSCA) 21 June 1946.

6. Judgment and Sentence (Relat to Specif.c Accused)

Chikanori TABUO - 5 April 1946, Guilty, death by hanging.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

Chikanori TABUO - 10 May 1946, sentence approved, execution withheld by Lieutenant General W. D. Styer, C. G., AFWESPAC, pending action of Confirming Authority.

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8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

Chikanori TABUO - 24 May 1946, sentence confirmed and ordered executed by General of the Army, Douglas MacArthur, SCAP, under the supervision of, and at the time and place to be designated by the C. G., AFWESPAC.

---

9. Date and Place of Execution of Sentence:

17 July 1946, Laguna Province, Philippine Islands.

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. D.

25-89621-300

HEADQUARTERS
UNITED STATES ARMY FORCES W[illegible]N PACIFIC
OFFICE OF THE COMMANDING [illegible]RAL

APO 707
20 July 1946

GSJA 000.5

SUBJECT: Execution of War Criminals Fuji[illegible]ge, Ono, Tabuo and Rin.

TO : Commander-in-Chief, United States [illegible]rmy Forces, Pacific,
APO 500.
Attention: Theater Judge Advocate

Japanese war criminals Masatoshi Fujishige, Satoru Ono, Chikanori Tabuo and Kin Ryu Rin, were each executed upon 17 July 1946 pursuant to AFPAC Military Commission Orders Number 19, dated 15 May 1946; Military Commission Orders Number 22, dated 31 May 1946; Military Commission Orders Number 21, dated 25 May 1946 and Military Commission Orders Number 24, dated 13 June 1946.

FOR THE COMMANDING GENERAL:

1 cc to
Legal Section, SCAP (Manila Branch)
Executive Officer, War Crimes Trials.

HEADQUARTERS
PHILIPPINE DETENTION AND REHABILITATION CENTER
APO 707

17 July 1946

Memorandum To: Commanding General, AFWESPAC, APO 707

Subject : Report on Execution of Japanese

1. In compliance with paragraph 4 of your SECRET Memorandum to Commanding General, Base X and Adjutant General, AFWESPAC dated 11 February 1946, the following report is submitted:

a. As ordered by your SECRET letter, 9 July 1946, Subject: Execution of Sentence, GSJA 000.5 the following named Japanese were executed by hanging at this Center on 17 July 1946 at hours indicated below:

Masatoshi Fujishige	— Trap sprung at 1958,	pronounced dead at 2010.
Satoru Ono	— Trap sprung at 2014,	pronounced dead at 2027.
Chikamori Tabuo	— Trap sprung at 2030,	pronounced dead at 2041.
Kin Ryu Rin	— Trap sprung at 2044,	pronounced dead at 2055.

b. The condemned prisoners were accompanied to the place of execution by a priest of his faith and an interpreter.

c. The letter, ordering the execution, was read to the prisoners at 1745 hours 17 July 1946.

d. The condemned men made the following final statements:

Masatoshi Fujishige — No statement.

Satoru Ono — "Trials for War Criminals are light for them, but I can understand that American authorities do not try to bring out all things in trial that they should."

Chikamori Tabuo — "I was not in the place where crime was committed, but I was very popular with the Philippine people and was pointed out by them."

Kin Ryu Rin — "I had followed orders from my commander and I a not ashamed of my crime. I want more justice in the trials of others who will follow me. My thanks to Lt. Gordon my defense counsel."

e. The behaviour of the condemned men was calm and stoical.

f. The bodies of the condemned and the persons of the priest ant interpreter left the Center for return to the Commanding Officer, POW #1 at 2100, 17 July 1946

g. Strict compliance with all of your instructions contained in the memorandum and letters referred to above was observed, and all matters proceeded expeditiously.

JOHN. H. PONVILLE
Colonel, CAC
Commanding

RESTRICTED

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL

GSJA 000.5

APO 707
9 July 1946

SUBJECT: Execution of Sentence.

TO : Commanding Officer, Philippine Detention and Rehabilitation Center, APO 75.

1. Your attention is directed to Military Commission Orders No. 19, dated 15 May 1946, issued from General Headquarters, United States Army Forces, Pacific, confirming the death sentence by hanging of Masatoshi Fujishige (51-J 92648), adjudged in the case of Masatoshi Fujishige et al.

2. Your attention is also directed to Military Commission Orders No. 22, dated 31 May 1946, issued from General Headquarters, United States Army Forces, Pacific, confirming the death sentence by hanging of Satoru Ono (51-J 126298), adjudged in the case of Satoru Ono.

3. Your attention is also directed to Military Commission Orders No. 21, dated 25 May 1946, issued from General Headquarters, United States Army Forces, Pacific, confirming the death sentence by hanging of Chikanori Tabuo (51-J 42450), adjudged in the case of Chikanori Tabuo.

4. Your attention is further directed to Military Commission Orders No. 24, dated 13 June 1946, issued from General Headquarters, United States Army Forces, Pacific, confirming the death sentence by hanging of Kin Ryu Rin (51-J 23626), adjudge in the case of Kin Ryu Rin.

5. In accordance with Memorandum from Commending General, AFWESPAC, directed to the Provost Marshal, AFWESPAC, and Adjutant General, AFWESPAC, dated 15 March 1946, subject: "Instructions Governing the Execution of Japanese War Criminals," the Provost Marshal will transfer custody of said war criminals, at such time as you may designate and you are hereby directed to execute the sentence as to those condemned war criminals, stripped of uniform, decorations and other appurtenances signifying membership in the military profession, as follows:

Place of Execution: Philippine Detention and Rehabilitation Center.
Time of Execution : 17 July 1946, at hours to be fixed by you.

RESTRICTED

RESTRICTED

Order of Execution: Masatoshi Fujishige first; Satoru Ono second; Chikanori Tabuo third; Kin Ryu Rin last.

6. The classification of this directive shall remain "SECRET" until one day after the date of execution, at which time it shall become "RESTRICTED."

J. G. CHIRSTIANSEN
Major General, United States Army
Commanding

4 Incls:
AFPAC MCO
Nos. 19, 21,
22 & 24.

RESTRICTED

GENERAL HEADQUARTERS
UNITED STATES ARMY FORCES, PACIFIC

Military Commission)
:
Orders No..... 21)

APO 500
25 May 1946

Before a Military Commission which convened at the High Commissioner's Residence, Manila, Philippine Islands, on 2 April 1946, pursuant to Letter Order, File AG 000.5 (5 Dec 45)LS, General Headquarters, Supreme Commander for the Allied Powers, dated 5 December 1945, subject: Regulations Governing the Trial of Accused War Criminals; Letter Order, File: AG 000.5(12 Feb 46)LS, General Headquarters, Supreme Commander for the Allied Powers, dated 12 February 1946, with indorsement thereto, subject: Trial of Chikanori Tabuo; and paragraph 2, Special Orders Number 76, Headquarters, United States Army Forces, Western Pacific, 1 April 1946, was arraigned and tried:

Sergeant Chikanori TABUO, of the Imperial Japanese Army.

CHARGE: That Chikanori TABUO, then a sergeant in the Imperial Japanese Armed Forces, and other persons whose names are unknown, connected and acting with Japan, did, at the time and place hereinafter set forth, and during a time of war between the United States of America, its Allies and Japan, willfully and unlawfully kill a Filipino civilian, in violation of the Laws of War.

SPECIFICATION: In that Chikanori TABUO, and other persons whose names are unknown, connected and acting with Japan, did, at or near Toledo, Cebu, Philippine Islands, on or about 2 November 1944, during a time of war between the United States of America, its Allies and Japan, willfully and unlawfully kill Remedio DELICIA, a Filipino civilian, who was then unarmed and a prisoner of the Japanese, by bayoneting him, in violation of the Laws of War.

PLEAS

To the Specification and the Charge: "Not Guilty"

FINDINGS

Of the Specification and the Charge: "Guilty"

SENTENCE

Death by hanging.

The sentence was adjudged 5 April 1946.

The following is the action of the reviewing authority:

(MCO 21)

"HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL
APO 707

10 May 1946

In the foregoing case of the United States of America vs. Sergeant Chikanori Tabuo of the Imperial Japanese Army the sentence is approved. Pursuant to paragraph 3, Letter Order, General Headquarters, Supreme Commander for the Allied Powers, file AG 000.5 (12 Feb 46)LS, subject: Trial of Chikanori Tabuo, dated 12 February 1946, execution is withheld pending the action of the Supreme Commander for the Allied Powers.

(signed) W. D. Styer
(typed) W. D. STYER
Lieutenant General, United States Army
Commanding"

The following is the action of the confirming authority:

"GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

APO 500
24 May 1946

In the foregoing case of Sergeant Chikanori Tabuo, Imperial Japanese Army, the sentence is confirmed and will be duly executed under the supervision of and at a time and place to be designated by the Commanding General, United States Army Forces, Western Pacific.

(signed) Douglas MacArthur
(typed) DOUGLAS MacARTHUR
General of the Army, United States Army
Supreme Commander"

By command of General MacARTHUR:

PAUL J. MUELLER,
Major General, General Staff Corps,
Chief of Staff.

OFFICIAL:

B. M. FITCH,
Brigadier General, AGD,
Adjutant General.

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE STAFF JUDGE ADVOCATE
APO 707

UNITED STATES OF AMERICA

-v-s-

CHIKANORI TABUO

REVIEW

MANILA, P. I.

DATE; 3 May 1946

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL
APO 707

10 May 1946

In the foregoing case of the United States of America vs. Sergeant Chikanori Tabuo of the Imperial Japanese Army the sentence is approved. Pursuant to paragraph 3, Letter Order, General Headquarters, Supreme Commander for the Allied Powers, file AG 000.5 (12 Feb 46) LS, subject: Trial of Chikanori Tabuo, Dated 12 February 1946, execution is withheld pending the action of the Supreme Commander for the Allied Powers.

W. D. STYER
Lieutenant General, United States Army
Commanding

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE STAFF JUDGE ADVOCATE

APO 707
3 May 1946

UNITED STATES - vs - CHIKANORI TABUO	Place of Trial	High Commissioner's Residence, Manila, P.I.
	Arraigned	2 April 1946
	Tried	2-5 April 1946
	Sentenced	5 April 1946

CHARGE

That Chikanori TABUO, then a sergeant in the Imperial Japanese Armed Forces, and other persons whose names are unknown, connected and acting with Japan, did, at the time and place hereinafter set forth, and during a time of war between the United States of America, its allies and Japan, willfully and unlawfully kill a Filipino civilian, in violation of the laws of war.

SPECIFICATION

1. In that Chikanori TABUO, and other persons whose names are unknown, connected and acting with Japan, did, at or near Toledo, Cebu, Philippine Islands, on or about 2 November 1944, during a time of war between the United States of America, its allies and Japan, willfully and unlawfully kill Nemedio DELICIA, a Filipino civilian, who was then unarmed and a prisoner of the Japanese, by bayonetting him, in violation of the laws of war.

PLEAS, FINDINGS AND SENTENCE

The accused pleaded not guilty, was found guilty of both the charge and specification and sentenced to death by hanging.

1. Formal Matters:

a. The commission and counsel were appointed and

trial was had pursuant to:

(1) Letter Order AG 000.5 (12 Feb 46) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 12 February 1946, subject: Trial of Chisanori Tabuo. The order directs the trial to be "conducted in conformity with Regulations Governing the Trials of Accused War Criminals, dated 5 December 1945, General Headquarters, Supreme Commander for the Allied Powers."

(2) First Indorsement to basic Letter AG 000.5 (12 Feb 46) LS, General Headquarters, United States Army Forces, Pacific, the indorsement being dated 12 February 1946.

(3) Special Orders Number 76, paragraph 2, Headquarters, United States Army Forces, Western Pacific, dated 1 April 1946.

b. Accused was arraigned and trial began on 1 April 1946. However, defense counsel was informally notified that he would serve in that capacity on 7 March 1946 and at the arraignment stated he was ready to proceed with the trial (R-11). Accused was served with an informational copy of the charge and specification, and a translation thereof on 25 March 1946. A certified copy of the charge and specification with a translation thereof was served on accused on 1 April 1946.

c. All members of the Commission were present including the duly appointed Presiding and Law member.

d. The rights of the accused as set forth in paragraph 5b of letter dated 5 December 1945, General Headquarters, Supreme Commander for the Allied Powers entitled "Regulations Governing the Trial of Accused War Criminals" were read to the accused in Japanese (R-7).

e. Members of the Commission, counsel for the prosecution, reporters and interpreters were sworn.

f. The name of accused's victim should be Delica and not Deliela as stated in the charge and specification. This discrepancy was rectified with defense counsel's assent (R-66).

EVIDENCE:

Testimony of A. Caballes: Witness identified the accused and said he was a sergeant in the Japanese Army (R-13). Knew the accused's victim, one Remedio Delica (R-13). Saw the accused with two other Japanese soldiers on 2 November 1944 take Delica to the beach; the two Japanese soldiers tied Delica to a tree so that his feet were off the ground, accused then bayonetted him three times in the abdomen. Victim was then cut loose from the tree and the accused and soldiers left (R-14). Witness claimed he could see the execution very clearly from his position (R-17). First saw accused on 2 September 1944 (R-20). Witness saw accused once or twice a week during the months of September and October and remembers November 2, 1944 as the day the execution took place because that was All Souls Day (R-20). At the prison camp witness identified accused from a series of pictures (R-24). November 4 or 5, 1944, accused with all the other Japanese soldiers left the town (R-26). Another Filipino told witness that Delica was killed because he was a suspected guerrilla but actually he was not. Accused had questioned Delica (R-29).

Testimony of Sebastian Libre: On 2 November 1944, witness saw accused in company of some Japanese soldiers tie Delica to a tree near the beach and bayonetted him three times in the abdomen. Witness was hiding behind some banana plants. After Delica was bayonetted he was cut free and fell to the

ground (R-48). There were two other Japanese with accused (R-49). Witness was about fifty feet away (R 51). Witness from his hiding place saw Caballes but the latter could not see him (R-51). Witness remembered accused well because he had frequently been to witness' house for tuba (R-54). Accused with all the other soldiers left the town on 4 November 1944 (R-55). Witness saw accused in town frequently during months of September and October (R-56).

Testimony of Aurelia Delica: Witness was the mother of Delica. Was told that her son had been arrested by accused on October 28, 1944 (R-68). Saw his dead body at the place where he was killed on November 4, 1944 and secured the help of friends to bury him there (R-69).

Testimony of accused: Accused stated that he came to Toledo in July 1944, that he left on September 2, 1944, that he went to Cebu City to receive tank training and that on 26 October 1944 he went to Guadalupe where he was put in the dispensary because he had yellow jaundice (R-74). He was in the dispensary until the latter part of December 1944 and he never went back to Toledo after he left there in the latter part of August 1944. After his discharge from the dispensary he went to Babak, from there into the hills until the time of Japanese surrender (R-74). Accused stated he never knew or saw any of the previous witnesses (R-75).

Testimony of Lt. Kawahara: Was accused's company commander (R-102). He ordered accused to go to anti-tank school in Cebu in the latter part of August, 1944 (R-103). Accused did not return to the unit until the latter part of December, 1944 (R-104).

Testimony of Lt. Kimura: Was assigned as a medic to the Guadalupe dispensary on November 1, 1944 and treated the accused there on that day (R-136). Accused was not able to walk

for 15 days after that and was discharged about the latter part of December 1944 (R-138).

Testimony of Sgt. H. Morita: Was a sergeant in the dispensary at Guadalupe and said that accused came to the dispensary the latter part of October or the beginning of November (R-156). Said that Lieutenant Kimura admitted the accused. Did not remember when accused left the dispensary (R-157).

Testimony of P. Fernandes in rebuttal: Saw the accused many times during the month of October, 1944 in Toledo. Accused left there on November 4 or 5 of that year (R-168).

Testimony of Syson: Witness saw accused near Toledo on September 26, 1944 at which time the accused killed witness' cousin. Witness saw accused about 20 times between September 20 and 26, 1944 (R-182).

Testimony of J. Bahina: Witness saw accused several times from the middle of September up to November 2, 1944 in the vicinity of Toledo (R-209).

Testimony of M. Bahina: Saw the accused frequently in Toledo from the middle of September to November 2, 1944 (R-216).

OPINION AND REASONS THEREFOR:

1. As to Jurisdiction and Procedure:

a. The commission was properly appointed and had jurisdiction over the offense charged and the person of the defendant.

b. The accused was advised of and accorded all rights required by the prescribed regulations.

c. Findings and sentence were returned upon concurrence of two thirds of the members of the commission.

2. As to Evidence:

The only substantial issue of fact raised by the

evidence was whether the accused was present in the vicinity of the crime at the time it was committed. Both from the standpoint of weight and credibility this issue was properly resolved against the accused.

Two eye-witnesses saw the accused commit the crime alleged. In addition to this, four other witnesses testified that he was seen by them many times in the vicinity of Toledo where the crime occurred during the period in which the accused and his witnesses claimed he was elsewhere. The testimony of all these witnesses was consistent and no motive for fabrication was made evident.

The accused, his company commander, a Lieutenant Kawahara, an officer and a sergeant in the medical dispensary at Guadalupe testified that the accused was there at the time of the offense. The commission was not disposed to believe this testimony and in the opinion of this reviewing authority its conclusion was correct. All of these witnesses made inconsistent and contradictory statements. The accused first stated that when he was admitted to the dispensary he was not able to walk for over one month. On cross-examination he admitted being able to walk with the aid of a cane. The accused further testified that he saw the sergeant at the dispensary everyday from November 1 until the time he left in December. The sergeant himself stated he left in the middle or latter part of November. Lieutenant Kawahara testified that no Filipinos were killed at Toledo during this time but in a statement made prior to the trial the contrary appears. The medical officer at the dispensary testified that accused was at the dispensary when he first arrived there but in a prior statement he said accused was brought to the dispensary by another soldier of his company. He also stated the sergeant was at the dispensary for

some time after the sergeant himself said he had left. The sergeant's testimony throws no light on the important question of the time during which accused was at the dispensary. It was brought out at the trial that all of these witnesses through their association in prison had ample opportunity prior to the trial to concoct an alibi in behalf of the accused.

The commission's finding is strongly supported by credible evidence and its conclusion on the only issue of fact created by the testimony was correct.

RECOMMENDATION:

It is recommended that the sentence be approved and the record of trial be forwarded to the Commanding General, United States Army Forces, Pacific, pursuant to paragraph 2, First Indorsement, General Headquarters, United States Army Forces, Pacific, 12 February 1946, to basic Letter file: AG 000.5 (12 Feb 46) LS, General Headquarters, Supreme Commander for the Allied Powers, subject: Trial of Chikanori Tabuc.

A form of action designed to effectuate the foregoing is attached.

FERD W. RUSCH
Capt., TC
Asst. Staff Judge Advocate

I CONCUR:

ASHTON M. HAYNES
Colonel, JAGD
Staff Judge Advocate

43

BASIC: Ltr, Hq 65th Sta Hosp, APO 75, dtd 17 Jul 46, Subject: Notification of Death.

GHQ. AFPAC 27 JUL 1946 AG 000.5 (Serv)

000.5 2nd Ind. WPM/fjg

HEADQUARTERS, AFWESPAC, APO 707, 22 July 1946

TO: Commander-in-Chief, GHQ, AFPAC, APO 500

Notification of the death of Chikanori Tabuo, executed by hanging in accordance with Military Commission Order No. 21, 25 May 46, is forwarded herewith.

FOR THE COMMANDING GENERAL:

W. P. MOORE
Lt Col, AGD
Asst Adj Gen

1 Incl:
Surgeon's Cert.

HEADQUARTERS
65th STATION HOSPITAL
APO 75

17 July 1946

GHQ, FPAC 27 JUL 1946 AG 000 SMO

SUBJECT: Notification of Death

THRU : Commanding Officer, Philippine Detention & Rehabilitation Center, APO 75

TO : Commanding General, AFWESPAC, APO 707

1. In compliance with Section II, par 2, AR 600-550, the following notification of death is submitted:

a. Name - CHIKANORI TABUO

b. Rank - War Criminal

c. ASN - 51-J42450

d. Arm or Service - Not applicable

e. Date of Death - 17 July 1946

f. Place of Death - Philippine Detention & Rehabilitation Center, APO 75

g. Cause of Death - Execution by hanging

h. Line of Duty - Not applicable

Elmer R Billings
ELMER R. BILLINGS
Captain, MC

1st Ind
Headquarters, Philippine Detention & Rehabilitation Center, APO 75, 17 July 1946

TO: Commanding General, AFWESPAC, APO 707

Forwarded.

John H. Fonvielle
JOHN H. FONVIELLE
Colonel, CAC
Commanding

C-E-R-T-I-F-I-C-A-T-E

17 July 1946

I certify that I examined the body of War Criminal CHIKANORI TABUO (51-J42450) after legal execution by hanging and pronounced him dead at 2041 hours, 17 July 1946.

Elmer R Billings

ELMER R. BILLINGS
Captain, MC

2085

Before The
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

* * * * * * * * * * * * * * * * * *

UNITED STATES OF AMERICA

*

vs ARRAIGNMENT & PUBLIC TRIAL

*

CHIKANORI TABUO

* * * * * * * * * * * * * * * * * *

VOLUME I

PAGES 1 To 85

MANILA, P.I. DATE 2 April 1946

COPY NO. 2

AUTHENTICATION

THIS CERTIFIES that this Volume is a part of the Proceedings of the Military Commission appointed by Letter Order, AG 000.5 (12 Feb 46) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 12 February 1946, Subj: Trial of Chikanori Tabuo; 1st Indorsement to basic letter, AG 000.5 (12 Feb 46) LS General Headquarters, United States Army Forces, Pacific, dated 12 February 1946; par. 2 of Special Order No. 76, Headquarters, United States Army Forces Western Pacific, dated 1 April 1946; and letter dated 1 April 1946, Subj: Summoning and Swearing Witnesses for Tabuo's Trial, in the trial of the case of the United States of America v. Chikanori Tabuo.

Dated 6 April 1946.

Francis A. Hause

FRANCIS A. HAUSE
Colonel, CAC, USA
President of Commission

BEFORE THE
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces,
Western Pacific

* * * * * * * * * * * * * * * * *

UNITED STATES OF AMERICA *

vs * ARRAIGNMENT & PUBLIC TRIAL

CHIKAFORI TABUO *

* * * * * * * * * * * * * * * * * Court No. 1
High Commissioner's Residence,
Manila, P.I.
2 April 1946

Met, pursuant to notice, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL FRANCIS A. HAUSE, CAC, PRES.& LAW MEMBER
LIEUTENANT COLONEL THOMAS H. ALLEN, INF (Armd)
LIEUTENANT COLONEL STARLEY N. BOYKIN, JR., INF.
CAPTAIN WILLIAM O. LUTZ, INF
CAPTAIN GLENN W. HENDRICKS, FA

APPEARANCES:

FOR THE PROSECUTION:

CAPTAIN ABRAHAM FISHMAN, JAGD, Chief Prosecutor
1st LIEUTENANT PRUDENCIO V. CASTILLO, JAGD

FOR THE DEFENSE:

1st LIEUTENANT IVAN H. GORDON, TC

OFFICIAL INTERPRETERS FOR THE COMMISSION:

VISAYAN:

FILOMENA ZOSA
JOSE BATUCAN
PRAXEDIO VILLALUZ

JAPANESE:

2nd LIEUTENANT RAYMOND NIMURA
T/3 GEORGE S. BABA
T/4 GEORGE W. USHIJIMA

OFFICIAL REPORTERS FOR THE COMMISSION:

William E. Rice
Arnold Cohen

I N D E X

WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS	COMMISSION
Alberto Caballes	12	29	41	42	44
Sebastian Libre	46	58	64		
Aurelia Deliberio Delica	66	70			
Chikanori Tabuo	72	76			

DOCUMENTARY EVIDENCE

	INTRODUCED	QUOTED
Letter Order AG 000.5 General Headquarters Supreme Commander for the Allied Powers, 12 February 1946 LS, Subject: Trial of Chikanori Tabuo	2	2
Basic Letter General Headquarters Supreme Commander for the Allied Powers, File 000.5 12 February 1946, 1st Indorsement Subject: Trial of Chikanori Tabuo	2	3
Extract Special Order No. 76, Paragraph 2, dated 1 April 1946	2	4
Letter of President of Commission to Prosecutor, dated 1 April 1946	2	5
Charge and Specification	10	9

EXHIBITS

	INTRODUCED	ADMITTED INTO EVIDENCE
Prosecution's Exhibit No. 1: Letter Order AG 000.5, dated 5 December 1945 LS, General Headquarters, Supreme Commander for the Allied Powers, Subject: Regulations Governing the Trials of War Criminals.	5	6

P R O C E E D I N G S

The Commission convened pursuant to notice at 0830 hours 2 April 1946 in Court No. 1, High Commissioner's Residence, Manila, P.I.

COL. HAUSE: The Commission will be in session.

CAPT. FISHMAN: May the record show that the following members of the Commission are present:

Colonel Hause
Lieutenant Colonel Allen
Lieutenant Colonel Boykin
Captain Lutz
Captain Hendricks

The Accused is a Japanese. He has been furnished a personal interpreter. Accordingly, it has been agreed between the Accused, Defense Counsel, and the Prosecution that inasmuch as a personal interpreter is provided for the Accused it will not be necessary to translate the proceedings in open court to the Accused. However, the Defense reserves the right at any time when necessary for the proper and complete understanding of the Accused to request certain parts of the proceedings to be translated by the official Commission Interpreter. I request the Defense Counsel to state whether I have correctly stated the agreement.

LT. GORDON: It has been correctly stated.

CAPT. FISHMAN: Does the Commission approve and accept that agreement?

COL. HAUSE: The Commission approves and accepts the agreement.

CAPT. FISHMAN: There has been referred to this Commission for trial the case of the United States of America against Chikanori Tabue. The Accused is now present together with Defense Counsel

appointed by the convening authority. The Prosecution is ready to proceed.

COL. HAUSE: You may proceed.

CAPT. FISHMAN: The Prosecution submits for incorporation into the records of these proceedings, the following documents:

Letter Order, AG000.5 (12 Feb 46) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 12 February 1946 with the subject being "Trial of Chikanori Tabuo".

First Indorsement to basic Letter, AG 000.5 (12 Feb 46) LS General Headquarters, United States Army Forces, Pacific, the indorsement being dated 12 February 1946.

Paragraph 2 of Special Order No. 76, Headquarters, United States Army Forces, Western Pacific dated 1 April 1946.

Letter, dated 1 April 1946, to Prosecutor for Commission, the subject being "Summoning and Swearing Witnesses for Tabuo's Trial" and signed by the President of the Commission.

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

AG 000.5 (12 Feb 46) LS

APO 500
12 February 1946

SUBJECT: Trial of Chikanori Tabuo.

TO : Commander-in-Chief
United States Army Forces, Pacific, APO 500.

1. It is desired that a Military Commission be appointed for the trial of Chikanori Tabuo, a member of the Japanese Imperial Forces, for the alleged offense indicated in the attached Charge.

2. The trial is to be held in the city of Manila, Philippine Islands. The trial shall be conducted in conformity with Regulations Governing the Trials of Accused War Criminals, dated 5 December 1945, General Headquarters, Supreme Commander for the Allied Powers.

3. The record of trial including judgment or sentence and the action of the appointing authority will be forwarded to this

headquarters. Unless otherwise directed, the execution of any death sentence will be withheld pending the action of the Supreme Commander for the Allied Powers.

FOR THE SUPREME COMMANDER:

/s/ H W. Allen
/t/ H.W. ALLEN
Colonel, AGD,
Asst. Adjutant General.

1 Incl:
Chg vs Chikanori Tabuo

BASIC Ltr, GHQ, SCAP, file 000.5 (12 Feb 46) LS dated 12 Feb 46
subj: "Trial of Chikanori Tabuo."

AG 000.5 (12 Feb 46) LS 1st Ind.

General Headquarters, United States Army Forces, Pacific,
APO 500, 12 February 1946.

TO: Commanding General, United States Army Forces, Western Pacific, APO 707.

1. Pursuant to basic communication you are hereby directed to appoint a Military Commission for the trial of the following named member of the Japanese Imperial Forces:

Chikanori Tabuo

* *

By command of General Mac ARTHUR:

/s/ H.W. Allen
/t/ H.W. ALLEN
Colonel AGD
Asst. Adjutant General.

1 Incl:
Chg as indicated

RESTRICTED

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC

Special Orders)
::
No.....76)

APO 707
1 April 1946

EXTRACT

2. The following officers are appointed members of a Military Commission to meet in the City of Manila, Philippine Islands, at the call of the President thereof, for the trial of Chikanori TABUO, accused war criminal. (Authority: 1st Ind. GHQ, AFPAC, APO 500, 12 Feb 46, to letter GHQ, SCAP, file AG 000.5 (12 Feb 46) LS, dated 12 Feb 46, subj: "Trial of Chikanori Tabuo"):

Col. Francis A. Hause CAC Pres. & Law Member
Lt. Col. Thomas H. Allen INF (Armd)
Lt. Col. Starley N.J. Boykin-INF
Capt. William O. Lutz INF
Capt. Glenn W. Hendricks FA

Capt. Abraham Fishman, JAGD, is designated Chief Prosecutor and 1st Lt. Prudencio V. Castillo, JAGD, is designated Asst. Prosecutor. 1st Lt. Ivan H. Gordon, TC, is designated Defense Counsel.

The Commission will follow the provisions of Letter, GHQ, SCAP, dated 5 December 1945, subj: "Regulations Governing the Trial of Accused War Criminals," and is authorized to employ or appoint such interpreters, stenographic reporters and other assistants as it shall deem advisable.

The record of trial including any judgment or sentence will be transmitted directly to this headquarters for action by the appointing authority.

BY COMMAND OF LIEUTENANT GENERAL STYER:

OFFICIAL: /s/ Benito Morales
/t/ BENITO MORALES
Colonel, AGD
Asst Adj Gen.

J G CHRISTIANSEN
Major General, USA
Deputy Commander, and
Chief of Staff

DISTRIBUTION:
War Crimes (75)

RESTRICTED

MILITARY COMMISSION
Convened by the
COMMANDING GENERAL
United States Army Forces, Western Pacific

APO 707
1 April 1946

SUBJECT: Summoning and Swearing Witnesses for Tabuo's trial

TO : Prosecutor for Commission

1. Pursuant to authority of provisions of Letter, General Headquarters, Supreme Commander for the Allied Powers, 5 December 1945, subject: "Regulations Governing the Trial of Accused War Criminals", you are authorized, as prosecutor of cases referred for trial to the Military Commission convened by the Commanding General, United States Army Forces, Western Pacific, by paragraph 2, Special Order No. 76, dated 1 April 1946, to issue, for this Commission, summons to compel the attendance of witnesses to any such trial and to require such witnesses to bring with them any papers or documents which may be used as evidence in such trial, and to administer oaths or affirmations to witnesses and other persons.

/s/ Francis A. Keuse
/t/ FRANCIC A. HAUSE
Col., CAC
President of Commission

COL. HAUSE: There being no objection, the orders and letters are incorporated into the record of these proceedings.

CAPT. FISHMAN: In connection with the First Indorsement to the Basic Letter from SCAP I wish to state that Captain Jenkins who is mentioned in that Indorsement is being returned to the States and is not serving with the Prosecution.

The Prosecution requests that there be incorporated in the record as Prosecution Exhibit No. 1, Letter Order, AG 000.5 (5 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 5 December 1945 with the subject being "Regulations Governing the Trials of Accused War Criminals."

COL. HAUSE: There being no objection, the letter order is so admitted to the record.

CAPT. FISHMAN: The Prosecution is ready to proceed with the arraignment.

COL. HAUSE: The Reporters will be sworn.

WHEREUPON, William E. Rice and Arnold Cohen were sworn as Official Reporters.

COL. HAUSE: The Interpreters will be sworn.

WHEREUPON, Filomena Zosa, Jose Batucan, Praxedio Villaluz, 2nd Lt. Raymond Nimura, T/3 George S. Baba, and T/4 George W. Ushijima were sworn as Official Court Interpreters.

COL. HAUSE: The Commission will be sworn.

WHEREUPON, Col. Francis A. Hause, CAC, President and Law Member; Lt. Col. Thomas H. Allen, INF (Armd); Lt. Col. Starley N.J. Boykin, INF; Capt. William O. Lutz, INF; and Capt. Glenn W. Hendricks, FA were sworn.

COL. HAUSE: The Prosecution will be sworn.

WHEREUPON, Capt. Abraham Fishman, JAGD, and 1st Lt. Prudencio V. Castillo, JAGD were sworn.

CAPT. FISHMAN: A certified copy of the Charge and Specification against Chikanori Tabuo together with a true and complete translation thereof in Japanese were served upon Chikanori Tabuo by me, Captain Abraham Fishman, on 1 April, 1946 at the High Commissioner's Residence, Manila, P.I. An informational copy of the Charge and Specification, and a translation thereof, were served on the Accused by me on 25 March 1946.

COL. HAUSE: The Rights of the Accused as set forth in Paragraph 5b of letter dated 5 December 1946, General Headquarters,

Supreme Commender for the Allied Powers, entitled "Regulations Governing the Trials of Accused War Criminals" heretofore incorporated into the record, will be read and explained.

The Accused, Defense Counsel and Prosecutor will rise and face the Commission. Will the Interpreter read the Rights of the Accused to the Accused in Japanese.

CAPT. FISHMAN: Sir, I have furnished the Accused with a translation in Japanese of those rights, and he has read them.

COL. HAUSE: Will the Interpreter ask the Accused if he has read and understands his rights?

WHEREUPON, the Interpreter translated to the Accused and the Accused made answer through Interpreter.

THE ACCUSED: Yes.

COL. HAUSE: Is the Defense Counsel satisfied?

LT. GORDON: Yes, sir.

CAPT. FISHMAN: Does the Commission desire that I read these rights in English, or does the answer of the Accused comply with the requirements to the Commission's satisfaction?

COL. HAUSE: That will comply with the requirements.

CAPT. FISHMAN: The Accused has been served with a translation into Japanese of the "Rights of the Accused" which have just been read.

COL. HAUSE: The provisions of Sub-Section (1) have been complied with, it appearing that a certified copy of the Charge and Specification, together with a true and complete translation thereof, were served upon the Accused on 1 April 1946.

Whom does the Accused desire to introduce as Defense Counsel?

LT. GORDON: Myself, sir; Lieutenant Ivan H. Gordon.

COL. HAUSE: Does the Accused wish to have the Charge and Specifications, the proceedings and documentary evidence translated to him?

LT. GORDON: No, sir.

COL. HAUSE: The Charge and Specification will be read to the Accused.

CAPT. FISHMAN (Reading):

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

Before the MILITARY COMMISSION convened by the COMMANDING GENERAL United States Army Forces, Western Pacific	UNITED STATES OF AMERICA vs Chikanori TABUO

CHARGE

That Chikanori TABUO, then a sergeant in the Imperial Japanese Armed Forces, and other persons whose names are unknown, connected and acting with Japan, did, at the time and place hereinafter set forth, and during a time of war between the United States of America, its allies and Japan, willfully and unlawfully kill a Filipino civilian, in violation of the laws of war.

SPECIFICATION

1. In that Chikanori TABUO, and other persons whose names are unknown, connected and acting with Japan, did, at or near Toledo, Cebu, Philippine Islands, on or about 2 November 1944, during a time of war between the United States of America, its allies and Japan, willfully and unlawfully kill Remedio DELICIA, a Filipino civilian, who was then unarmed and a prisoner of the Japanese, by bayonetting him, in violation of the laws of war.

Dated 11 February 1946.

/s/ Alva C. Carpenter
/t/ ALVA C. CARPENTER
Colonel, JAGD
United States Army

AFFIDAVIT

Before me personally appeared the above-named accuser this 11 day of February 1946, and made oath that he is a person subject to military law and that he personally signed the foregoing charge, and

further that he has investigated the matters set forth in the charge, and that it is true in fact, to the best of his knowledge and belief.

/s/ Edmund M. Sweeney
1st Lt JAGD, AUS

GENERAL HEADQUARTERS
UNITED STATES ARMY FORCES, WESTERN PACIFIC
APO 707

1 April 1946

Referred for trial to Capt. Abraham Fishman, JAGD, Prosecutor of the Military Commission appointed by paragraph 2, Special Orders No. 76, this Headquarters, 1 April 1946.

By command of Lieutenant General STYER:

/s/ J.J. Gerhardt
/t/ J.J. GERHARDT
Colonel, AGD
Adjutant General

I hereby certify that I have served a copy hereof, together with a true and complete translation thereof into Japanese, on the above-named accused this 1st day of April 1946.

/s/ Abraham Fishman
Capt. JAGD

CAPT. FISHMAN: The Prosecution now introduces for incorporation into the record the Charge and Specification which have been read to the Accused.

COL. HAUSE: There being no objection the Charge and Specification are incorporated into the record. Is the Accused now ready to enter his plea?

LT. GORDON: Yes, sir.

COL. HAUSE: Chikanori Fabue, at this time the Commission will hear your plea to the Charge and Specification which have been read to you. You may plead either "Guilty" or "Not Guilty".

THE ACCUSED: (Through the Interpreter.) I plead not guilty.

COL. HAUSE: Is the Prosecution ready to proceed with the trial?

CAPT. FISHMAN: The Prosecution is ready to proceed, and the Prosecution also wishes to state for the record that the Defense Counsel was informally notified on or before 7 March 1946 that he would be appointed as Defense Counsel for the Accused and he began to act as Defense Counsel on that date. I ask the Defense Counsel to state whether that is correct.

LT. GORDON: That is correct.

COL. HAUSE: Is the Defense ready to proceed with the trial?

LT. GORDON: Yes.

COL. HAUSE: Prosecution will make its opening statement.

CAPTAIN FISHMAN: Sir, the testimony to be presented by the Prosecution in this case will show that the Accused was a member of the Japanese Army; that he was stationed in the city of Toledo, the island of Cebu, Philippine Islands; that on the 2nd of November, 1944, he bayoneted to death a Filipino civilian named Remedio Delica; and that there was no excuse or justification for that killing.

If that statement of the essence of the Prosecution's case is sufficient, the Prosecution is ready to proceed with the witnesses.

COLONEL HAUSE: Prosecution may proceed.

ALBERTO CABALLES

called as a witness by the Prosecution, was sworn and testified as follows through Interpreters Filomena Zosa, Jose Batucan, and Praxedio Villaluz:

DIRECT EXAMINATION

BY CAPTAIN FISHMAN:

Q What is your name?

A Alberto Caballes.

Q What is your age?

A Thirty-one.

Q What is your occupation?

A Gardener.

Q Are you a Filipino citizen?

A Filipino.

Q Where do you live now?

A Town of Toledo, Province of Cebu.

Q Where did you live in 1944?

A The town of Toledo.

Q Do you know the Accused in this case?

A I know him.

Q What is his name?

A Chikanori Tabuo.

Q Do you see him in this court room?

A I see Tabuo (indicating).

Q Is he on the left, the right, or in the center?

A In the center.

CAPTAIN FISHMAN: I state for the record that the witness pointed toward the Accused.

Q In 1944 was he a sergeant in the Japanese Army?

A Sergeant.

Q In the Japanese Army?

A Japanese Army.

Q Do you know a Filipino named Remedio Delica?

A Yes, I know him.

Q Is he still living?

A Dead.

Q Were you present at the time he died?

A Yes.

Q Where did it take place?

A The town of Toledo.

Q When did it take place?

A November 2nd.

Q Of what year?

A 1944.

Q What were you doing at the time?

A I was in my small hut making salt.

Q About what time of day was it that it happened?

A About four o'clock in the afternoon.

Q Will you tell the Commission what you saw?

A Yes. Tuesday, about four o'clock in the afternoon, November 2, 1944, I was in my small hut at the beach making salt. I saw Remedio Delica with Tabuo--with two Japanese soldiers. I saw Tabuo with the bayonet. Each Japanese soldier was with a bayonet and rope. They took Remedio to the Magtalisay tree. His hands were tied behind his back. Then his neck was tied with the rope and he was hanged to that Magtalisay tree.

Q Who was hanged?

A Remedio Delica, with his feet hanging this height (indicating). While he was hanging, Tabuo bayoneted Remedio three times at his abdomen.

Q Who tied Remedio to the tree?

A His two other Japanese companions.

Q Whose two other Japanese companions?

A I do not know them.

Q Whose companions?

A Tabuo.

Q What happened after Tabuo bayoneted Remedio?

A The two Japanese soldiers cut off the rope that tied Remedio Delica's hands to the tree and cut off, too, the rope that tied Delica's neck to the tree, and Remedio Delica fell to the ground face down.

Q Then what happened?

A After that three of them --- three left, and I went near the dead body of Remedio Delica, and I looked at the wounds at his back and I found that the bayonet burst or made marks in

the tree, the body of the tree. Then I left the body and went home. I did not go back to the place again.

Q Did the bayonet go through the body of Remedio and into the tree?

A Yes, and it pierced the tree.

Q How many bayonet wounds did you see on Remedio's body when you examined it?

A Three.

Q Was Remedio alive or dead when you examined him?

A Already dead.

Q How do you know he was dead?

A He did not move and he did not breathe.

Q Will you describe where this killing took place?

A It happened at the beach at the foot of the Magtalisay tree.

Q What buildings were in the vicinity?

A The Dispensary and the Municipal Building.

LIEUTENANT GORDON: Pardon me, I don't get the answers most of the time. Will the reporter read the last question?

(The last answer was read by the reporter.)

Q Were those buildings burnt out at the time?

A The Municipal Building was burnt, excepting the Dispensary.

LIEUTENANT GORDON: I think if the Interpreter turned her head, your Honor, I could hear very clearly.

COLONEL HAUSE: All right.

Q Was there a tennis court in the vicinity?

A There was.

Q Was there a banana tree between the tennis court and the Dispensary?

LIEUTENANT GORDON: I object, your Honor. I have allowed leniency up to now in the matter of leading questions. But I think the questions can be framed differently in eliciting the response.

COLONEL HAUSE: Please change your phrasecology on that or withdraw it.

CAPTAIN FISHMAN: I will withdraw the question.

BY CAPTAIN FISHMAN:

Q Was there anything between the tennis court and the Dispensary?

A The Magtalisay tree.

Q Was there anything else between the tennis court and the Dispensary?

A Some banana plants.

Q Was there a dike in the vicinity?

LIEUTENANT GORDON: A leading question.

COLONEL HAUSE: Please change your phraseology on that.

CAPTAIN FISHMAN: Withdraw the question.

Q How close to the Talisay tree was the sea?

A Six to seven meters.

Q Was the ground between the water's edge and the Talisay tree level or irregular?

A At the foot of Magtalisay tree was land and the upper part is elevated.

Q Is is true then that there was an elevation in the ground in the vicinity of the tree?

A Yes.

Q Was there anything in the vicinity to prevent the water from flowing over into the land?

A Yes, there was.

Q What was there?

A Piled stones.

Q About how high was the pile of stones?

A About two meters high.

Q About how far away were you from the Talisay tree where Remodio was killed?

A More or less fifty meters.

Q Was it a bright day or a cloudy day?

A It was a hot day.

Q Was the sun shining?

A Yes, it was shining.

Q Could you see clearly?

A Yes, very clear.

Q Were there any obstructions between you and the Talisay tree?

A No.

Q Was there anything between you and the tree that would obstruct your vision in any way?

A Nothing.

Q How many Japanese soldiers did you see with Tabuo?

A I saw two Japanese soldiers; all in all, three, including Tabuo.

Q Do you know the names of the other two?

A No, except Tabuo.

Q How long did this incident take?

A About half an hour.

Q Were you observing it all the time?

A Yes, I was observing it.

Q Did you see Tabuo there all the time?

A Yes, I saw him all the time.

Q Did the Japanese see you?

A I did not know whether they saw me.

Q What were you doing all during the time?

A I was making salt.

Q Were you working at your salt or were you looking at the Talisay tree?

A I was looking at the Magtalisay tree.

Q How thick was that tree?

A As big as my leg.

(Conversation ensued between Prosecution and Defense Counsel out of hearing of the Commission.)

CAPTAIN FISHMAN: Prosecution and Defense agree that the diameter of the witness' leg is approximately eight inches.

Q Is it possible that there might have been some other Japanese soldiers behind the pile of stones whom you did not see?

A I did not see. If ever some Japanese soldiers hid behind the pile of stones, I couldn't see them.

Q Was the pile of stones high enough and thick enough so that if there were any Japanese there they would be invisible to you?

LIEUTENANT GORDON: I object to the question. The witness has already testified to the height of the stones.

COLONEL HAUSE: Objection sustained.

Q How high was the elevation in the ground in the vicinity of the Talisay tree?

A About four feet.

Q Did you see Sebastian Libre in the vicinity?

A I did not see.

Q Did you observe whether there was anything behind the banana tree?

A No.

COL. HAUSE: The Commission will take a ten minute recess.

WHEREUPON, at 0920 hours the Commission recessed until 0930 hours at which time the proceedings were as follows:

COL. HAUSE: The Commission will be in session.

CAPT. FISHMAN: I state for the record that all five members of the Commission are present, the Accused , the Defense Counsel and Prosecution.
Will you remind the witness that he is still under oath.

WHEREUPON, Interpreter Zosa translated to the witness.

DIRECT EXAMINATION (CONT.)

BY CAPTAIN FISHMAN:

Q Did you look to see whether there was anything behind the banana tree?

A I did not go and see.

Q Did you look to see?

A No.

Q When did you first see Tabuo?

INTERPRETER: The witness asked me if it was before this case?

A I saw Tabuo September 2nd, 1944.

Q Are you positive that it was on the 2nd of September that you first saw him?

A Yes.

Q Is it possible that it might have been on some other date early in September?

A I saw him from September 2nd 1944 until October and November.

Q How often did you see him during September and October?

A I saw him once or twice a week in September.

Q How long did you see him in October?

A The same; I used to see him once or twice a week in October.

Q Where was it that you used to see him in September and October?

A The town of Toledo.

Q Have you ever talked to him?

A Sometimes I talked with him because he goes to my house.

Q What did he do at your house?

A He was looking for some civilians who have some wounds to get rid of.

Q Are you positive that it was Tabuo who bayonetted Remedio on November 2nd?

A Yes, Tabuo.

Q Is it possible that it might have been some other Japanese?

A He himself bayonetted.

Q How do you know that it was on November 2nd, 1944 that the killing took place?

A Yes, it was the All-Saints Day.

Q Is November 2nd All-Saints Day or All-Souls Day?

A All-Souls Day.

Q When is All-Saints Day?

A I do not know.

Q What makes you connect up in your mind All-Souls Day and the day on which you saw this killing?

A It is the Filipino custom to celebrate All-Souls Day on November 2nd.

Q What makes you sure that this killing occurred on All-Souls Day?

A Yes, because November 2nd is All-Souls Day. On November 2nd All-Souls Day.

Q What makes you remember that the first time you saw Tabuo was September 2nd?

A He was the one who killed Remedio Delicia.

Q What makes you remember the date when you first saw Tabuo?

A He was there in Toledo till November.

Q Is it possible that the first day on which you saw Tabuo may have been September the 1st or 3rd?

A From September 2nd, 3rd, 4th, until November.

Q Is it possible that the first time you saw Tabuo might have been September the 3rd or 4th?

LT. GORDON: I object to this question. It has been asked before and it has been asked time and time again. It is incompetent and immaterial at this time.

CAPT. FISHMAN: If the Commission please, the matter of date is very important and I wish to explore thoroughly the witness' memory as to date because the matter of date is a crucial question in this case. That is why I am going into the witness' memory in this case.

COL. HAUSE: The objection is overruled.

LT. GORDON: Exception.

COL. HAUSE: The witness will answer the question.

CAPT. FISHMAN: Read the question.

WHEREUPON, the last question was read by the Reporter.

A Beginning September 2nd, three, four, I saw Tabuo.

CAPT. FISHMAN: Will you ask that question again?

WHEREUPON, Interpreter Zosa translated to the witness.

A Yes, from September three, four, until October and November.

Q Is it possible that the killing of Remedio took place on November 1st or November the 3rd?

A November 2nd, All-Souls Day.

CAPT. FISHMAN: In your question you included the second. I just said the first and the third. I will repeat the question.

COL. HAUSE: I don't believe the witness understands the question at all. He has not answered the question at all.

Q Is it possible that the killing of Remedio occurred on November 1st or on November 3rd instead of November 2nd?

A Second.

CAPT. FISHMAN: Ask the question again.

WHEREUPON, Interpreter Zosa translated to the witness.

A He was killed on November 2nd, All-Souls Day.

Q Is it possible that it happened on November the 1st?

A I saw Remedio killed November 2nd.

Q Have you ever seen Remedio Delica before that time?

A I only saw him when he was killed.

Q Did you ever see him before he was killed?

A No, I did not see him.

Q Did you recognize the Filipino whom Tabuo killed?

A Yes, I know him.

Q How long had you known him?

A Yes, I know him for a long time before he was killed.

Q Did you recognize him when you first saw the Japanese soldiers leading him to the tree?

A Yes.

Q When you were first being questioned about this killing, how did you identify Tabuo as the one who did it?

A He goes to our house.

Q When you were first being questioned about this killing were you shown any pictures of Japanese?

A Yes, I was shown.

Q How many pictures were you shown?

A Three; the fourth I saw Tabuo, I recognized Tabuo.

Q How many pictures did the investigator have?

A Four.

Q Did the investigator tell you the names of any of the persons on those pictures before you identified Tabuo?

A No.

Q Was Tabuo's picture the last one that was shown to you?

A Yes.

Q Did you after that identify Tabuo in person?

A Yes.

Q Where was this?

A The prison camp.

Q In the prison camp in what city?

A It's just near the landing field.

Q Nichols Field?

A I do not know but I saw planes near.

Q Was it near Manila?

A Not far from this place; it's about four or five kilometers.

LIEUTENANT GORDON: I agree it is Nichols Field, Captain Fishman.

Q When you identified Tabuo at the prison camp near the air field, how many Japanese were lined up with Tabuo?

A Ten.

Q Were you told which one was Tabuo?

A No.

Q Were you able to identify which one was Tabuo?

A Yes.

Q Did you ever identify Tabuo at Leyte?

A No.

Q About how many Japanese were there at Toledo in October?

A To my calculation, about 32 or 33.

Q How many of them did you know by name?

A Only two.

Q Who were they?

A Hirose San and Tabuo.

Q How does it happen that you knew those two by name?

A He was the guard, sentry guard in Toledo.

Q Who was the sentry guard in Toledo?

A Hirose San was the sentry guard.

Q How did you find out Hirose's name?

A That's how the Japanese call him.

Q Did you hear the Japanese call him Hirose?

A They call him Hirose San.

Q How did you find out Tabuo's name?

A He himself told me he is Tabuo.

Q Did you find out in any other way?

A Besides his telling, himself, that he was Tabuo, the civilians call him Tabuo.

Q Did you find out that his name was Tabuo before November 2, 1944?

A I know him since September.

Q Do you know the names of any other Japanese soldiers in Toledo?

A I know one but he was not a soldier; he was a civilian whose name was Matsumoto.

Q Do you know the names of any other Japanese soldiers in Toledo?

A Only two of them.

Q How does it happen that out of 32 or 33 Japanese you knew only the names of Hirose and Tabuo?

A Because Tabuo used to go out getting eggs from civilians and giving treatment to civilians in the town of Toledo.

Q How about Hirose? How does it happen that you knew his name?

A Some Japanese soldiers call him Hirose.

Q Was Tabuo well known in Toledo?

A Yes.

Q Why was he well known?

A He was well known in Toledo because he called himself

a' medicine man, going around the town of Toledo looking for civilians that needed treatment.

Q Is there anything about Hirose that makes you remember him?

A Yes.

Q What?

A He has the height; he has a wide face; he has a gold tooth.

Q Did Tabuo call himself"Dr. Tabuo"?

A Yes.

Q Do you know when the Japanese left Toledo?

A Yes, I know.

Q When was it.

A November 4 or 5 of 1944.

Q Why do you remember the date?

A After Remedio Delica was killed November 2nd, November 4th or 5th there were no more Japanese soldiers in the town of Toledo.

Q Are you sure that the Japanese soldiers left the town of Toledo about November 4th or 5th?

A Yes, I am sure.

Q Does the time when the Japanese soldiers left Toledo stand out in your memory?

A Yes.

Q Why?

A I remember the date on November 2 when Remedio Delica was killed; November 4th and 5th they left Toledo.

Q How many days before the Japanese left Toledo was Remedio killed?

A November 2nd; 3rd, 4th, after Remedio Delica was killed; the 5th, three days after, there were no more Japanese soldiers

in Toledo.

Q Do you know Cristobal Lara?

A Yes, I know him.

Q Where did he live in 1944?

A He was living in the Japanese garrison.

Q In what city?

A In Toledo.

Q Was he a Filipino?

A Filipino.

Q Did he ever tell you anything about Remedio's killing?

LIEUTENANT GORDON: I object, your Honor. This is hearsay evidence.

CAPTAIN FISHMAN: Sir, the Prosecution concedes that it's hearsay evidence but the Prosecution submits that it does have some probative value as tending to corroborate the evidence presented by the witness.

LIEUTENANT GORDON: I think the Prosecution should show, your Honor, why this witness cannot be procured, why he isn't in court, before any such testimony be admitted.

CAPTAIN FISHMAN: That's fair enough, sir. We requested the OCCW to bring Cristobal Lara with the other witnesses. He was on the list of witnesses that we requested. They searched for him several days and they could not find him. It was reported to me that he fled when he learned that he was being sought and the reason that was given to me was that he had worked with the Japanese. He thought he might be accused of being a collaborator, and for that reason he fled, and that is why we cannot produce him.

COLONEL HAUSE: The Commission will hear the evidence

in Toledo.

Q Do you know Cristobal Lara?

A Yes, I know him.

Q Where did he live in 1944?

A He was living in the Japanese garrison.

Q In what city?

A In Toledo.

Q Was he a Filipino?

A Filipino.

Q Did he ever tell you anything about Remedio's killing?

LIEUTENANT GORDON: I object, your Honor. This is hearsay evidence.

CAPTAIN FISHMAN: Sir, the Prosecution concedes that it's hearsay evidence but the Prosecution submits that it does have some probative value as tending to corroborate the evidence presented by the witness.

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COLONEL HAUSE: The Commission will hear the evidence

and will accept it at its probative value.

Will the reporter read the last question?

(The last question was read by the reporter.)

LIEUTENANT GORDON: If it please the court, I would like the witness to confine his evidence to this killing and not any other killing.

COLONEL HAUSE: Yes.

BY CAPTAIN FISHMAN:

Q Did Cristobal Lara ever tell you anything about, or related to, the killing of Remedio Delica on November 2, 1944?

A Yes.

Q When was it that he spoke to you?

A I don't remember the exact date.

Q Was it before or after the killing?

A After the killing.

Q About how many days after the killing?

A Two or three days.

Q Where was it that he spoke to you?

A At the market place.

Q In what city?

A Toledo.

Q What did he say to you?

A He told me that Remedio Delica was killed because he was suspected as a guerrilla man by Tabuo.

Q Will you give the entire conversation with Lara?

A That's all I know.

Q Did Lara tell you whether he had seen Remedio being investigated?

A Yes.

Q What did he say about the investigation?

A He was asked if he was a soldier. Remedio answered that he is only a civilian and Tabuo called him a liar. That is all.

Q Did Lara tell you who it was that was questioning Remedio?

A Yes, Tabuo.

Q Did Lara tell you when this questioning took place?

A No.

Q Did Lara tell you where this questioning took place?

A Yes, at the Japanese Garrison.

Q Are you sure that Lara told you that it was Tabuo who was questioning Remedio?

A Yes.

Q Do you know whether Remedio was a guerrilla?

A No, he was not.

CAPT. FISHMAN: Your witness.

CROSS EXAMINATION

BY LT. GORDON:

Q Mr. Caballos, you said you were 31 years old. Does that mean you are 31 years old now?

A In February 24th I have been 31 years.

Q Are you married?

A Yes.

Q Have you any children?

A Yes.

Q How many?

A Five; all alive.

Q Were any of them killed by the Japanese? Did you have more than five?

A No.

Q Is your wife living?

A Yes.

Q How long had you lived in Toledo before the 2nd of November 1944?

A I was living in Toledo since 1932.

Q Is this hut where you made salt the place where you lived, too?

A No.

Q Where is your home located?

A Near the sentry where the Japanese live.

Q Is that near the Daido Company?

A Just near the pier of Toledo.

Q How far from the garrison is your hut , the hut where you made salt?

A About half a kilometer.

Q How far from the garrison was your home?

A About 200 yards.

Q How far from where you are sitting through the door of this room do you think it is?

A (The witness got up and pointed.) It reaches from the place where I stand to that wall there, the seawall; the distance from my house to the garrison.

Q How far would you say that is?

A I cannot give the exact distance because I do not know how to give exact measurement.

Q You gave the exact distance to Captain Fishman from the hut to the tree; you said it was about fifty meters. Why can't you give the exact distance now?

A It was just my own calculation.

Q Make your own calculations now.

A Approximately 200 yards.

COL. HAUSE: Let the record show the witness pointed out a distance which in his estimation was 200 yards. What wall was he pointing to?

INTERPRETER ZOSA: The one where the tank is.

LT. COL. ALLEN: Did he point at the tank or the wall to the left?

LT. GORDON: The wall to the left, sir.

Q On the 2nd of November when Remedio was bayonetted, what uniform was Tabuo wearing?

A He was wearing a faded khaki shirt, rolled up shirt sleeves, short pants. He had his Japanese cap on his head.

Q Did he have any insignia on either of his pockets?

A I saw some, but it was not clear what it was.

Q When you saw Tabuo on other occasions in town, did you see the insignia he was wearing?

A Before Remedio was killed I saw Tabuo wearing insignia.

Q After Remedio was killed did you see Tabuo wearing any insignia?

A I have not seen Tabuo after Remedio was killed.

Q When you saw Tabuo wearing an insignia, what was that insignia?

A I saw one stripeand one star. I do not know what the insignia was.

LT. GORDON: You mean he doesn't know what the insignia stood for?

INTERPRETER ZOSA: Yes.

Q But you are sure it had only one star on it?

A Yes, at that time that I saw him.

Q Would you be surprised if I told you that that insignia was a Corporal's insignia in the Army?

A I do not know the symbol of that insignia.

Q You told the Commission on direct examination that Tabuo was a sergeant. Are you sure of that?

A He was the one who told me that he was a sergeant.

Q Are these the first Japanese soldiers that you ever saw?

A I saw several Japanese soldiers and I saw him.

Q I mean before Tabuo's unit came to Toledo, had there ever been any other Japanese soldiers there?

A Captain Yamada's unit went in before Tabuo.

Q How long had they been there?

A From 1943 to the latter part of that year, 1944.

Q So that by the time Tabuo and his unit got there you were quite familiar with seeing Japanese soldiers about?

A Yes.

Q You knew from seeing them about the difference between an officer, noncommissioned officer and a private, did you not?

A I cannot tell the rank. I can tell the distinction if they are American officers and American soldiers.

Q Can you tell the distinction of Japanese--

COL. HAUSE: The Commission will take a ten minute recess.

WHEREUPON, at 1022 hours, the Commission recessed until 1032 hours at which time the proceedings were as follows:

COL. HAUSE: The Commission will be in session.

CAPT. FISHMAN: May the record show that all members of the Commission are present, also the Accused and the Defense Counsel and the Prosecution. Will you remind the witness that he is still under oath.

WHEREUPON, Interpreter Zosa translated to the witness.

CROSS EXAMINATION (CONT.)

BY LT. GORDON:

Q How many Japanese soldiers would you say were in the Tabuo unit?

A Thirty-two or thirty-three.

Q Were there any officers in the unit, those soldiers who seemed to be in command?

A I do not know if there was an officer.

Q Do you think Tabue was in commend of the unit?

A I do not know.

Q You saw these soldiers about a good number of days. Cannot you make up your mind who was in command and were there any other officers there?

A I saw them, but I do not know who was the commanding officer.

Q I do not want to know whether you know who the commanding officer was. I want to know whether you think in your own mind whether there were any Japanese officers in that unit at Toledo?

A There were officers there. I do not know them.

Q Will you describe to me this hut in which you made salt? I want to know whether it has any windows or whether it is on stilts and stands above the ground, and details similar to that.

A My hut has no walls.

Q Does it have a roof?

A Yes.

Q Does it stand above the ground?

A Yes, naturally.

Q Is the floor above the ground, and if it is above the ground, how high off the ground is it?

A No floor.

Q Do I understand you to tell me that this hut has a stick at each corner and supports the roof and that is the entire hut?

A Six small posts.

Q Posts?

A Posts.

Q And a roof?

A And a roof.

Q And that's all?

A Yes.

Q How much salt are you able to make usually in one day?

A We are able to get salt after three days' cooking.

Q How much salt did you make this day, the 2nd of November, 1944?

A I was starting to make salt November 2nd just.

Q How much salt did you make on November 2nd?

A We were just boiling yet salt water.

Q Did you go to church on that day?

A No.

Q Wasn't it a holiday? Don't you usually go to church on a holiday?

A At that time I was not able to be at mass.

Q Why?

A I was at work.

Q Was it work?

A It was at work.

Q But don't you usually go to church on a holiday?

A Some other occasions, excepting that day, November 2nd.

Q Why didn't you go on this holiday?

A I did not hear mass because I was at work.

Q You told me you were at work, but I want to know why you were working and you did not go to church?

A Not all people hear mass on that feast day.

Q Do you remember whether you went to church on All Saints' Day of that year?

A I did not hear mass that day.

Q What day, All Saints' Day?

A All Souls' Day.

Q I am talking now about All Saints' Day of 1944.

A I hear mass on Sundays.

Q On Sundays only?

A I hear mass on Sundays. I do not work on Sunday.

Q Did the Father hold mass in Toledo during the Japanese occupation?

A Yes.

Q How many people attended usually?

A It's not my habit counting the people going to church.

Q Would you say that there were a hundred or two hundred there?

A I cannot say anything about that; I had not counted.

Q Were there many people in Toledo during the Japanese occupation?

A Yes, there were.

Q How many?

A I did not make any census of all the houses in Toledo.

Q I ask you to estimate in your own mind and in your own manner how many people you think remained in Toledo during the Japanese occupation.

A All I could see is that there were people, but I could not give any estimate of the number because I don't like to be called a liar.

Q I am not calling you a liar; I am just asking you for some information.

A I cannot give you any information.

Q How many people would you say lived in Toledo before the Japanese came there?

A Just the same; I do not know.

Q Would you say that a lot of the people who lived in Toledo before the Japanese came left the city and went into the mountains?

A Some evacuated; the others stayed in Toledo.

Q What is the answer again?

A Some people evacuated to the mountains; some stayed in Toledo.

Q Would you say half of the people left the town and the other half stayed?

A I cannot say anything.

Q Is it that you cannot say anything or that you don't want to say anything?

A I cannot say anything as to the number of the people, whether half of the people left the town or half of the people stayed in the town.

Q Was there anybody in your hut making salt with you at the time Remedio was killed?

A I was all alone.

Q Will you tell me what sort of a tree a Talisay tree is -- how tall it is, how wide, how high from the ground the first branch is? Does it look like a coconut tree? Describe it to the court and to myself.

A I can say that the tree was just as large as my leg but I cannot give you the exact height of the tree.

Q I don't want the exact height. You were able to tell us that your hut was about 50 meters away. You also said that your hut was that far from the garrison. Now we want you to tell us how high the tree was. As high as the ceiling?

A The height of the tree is beyond that ceiling.

Q How high from the ground would you say that the first branch, the lowest branch of that tree was?

A It's beyond the man's reach.

Q How far from the first branch or the branch to which Remedio was hanged, was his head?

A The lowest branch is farther than Remedio's head.

Q Farther. All right. Now, how far was the lowest branch from Remedio's head when he was hanging?

A About a meter or more.

Q When the Japanese soldiers came with Remedio to the tree did they throw the rope around the lower branch and pull him up off the ground?

A Yes.

Q To what did they tie the other end of the rope?

A He pulled the rope that tied Remedio's neck down -- tied through the tree, to the tree, and it was thrown down.

Q Where did they tie the other end?

A The rope that tied Remedio Delica's neck was thrown to a tree, and they pulled it after that, and they tied the rope around him.

Q Would you say that Tabuo, before he killed Remedio, was well liked by the people who lived in Toledo?

INTERPRETER ZOSA: Will you please repeat the question?

Q Would you say that Tabuo, before this incident took place, was well liked by the people of Toledo?

A I do not know if they liked him.

Q You told us before that Tabuo used to go from house to house and give medicine to the sick and injured Filipinos. Do you think that this would make him liked by the people?

A I do not observe whether the people liked him, only that I know that he was giving treatment to the people in Toledo.

Q Did Tabuo ever give you or your family any treatment?

A No.

Q Did you or your family ever require any medicine while the Japanese were in Toledo?

A No, they did not.

Q Did you ever ask Tabuo for any medicine?

A No, I didn't.

Q On the day of the killing and at the hour that Remedio was said to have been killed, where was the tree in reference to your hut? Was it north, east, south, or west? Do you know?

A His hut was south of the tree.

Q Let us assume that this is the shore line (Defense Counsel places books on Interpreters' table) and that this is your hut where you were making salt (indicating), and that this is the tree. Would you say that that is the position?

(The Witness rises and walks to Interpreters' table.)

A This is the Magtalisay tree and this is my hut. This is the Municipal Building over here (indicating), and this is the Dispensary. This is the tennis court (indicating).

Q In which direction was the sun shining at the time?

A The sun rises here (indicating).

Q I know where it rises, and I know where it sets. But I want to know where the sun was when that happened.

A The sun was there (pointing).

Q The sun was in the west or northwest, is that right?

A The sun was in the west just near the place of Kanlaon Volcano.

Q Was the sun shining in your eyes when this incident took place?

A I don't see the sun shining.

Q Was the sun shining in your eyes when this incident took place?

A Yes.

Q Did you get about much and mingle with the people in Toledo while the Japanese were there? Do you understand what I mean?

INTERPRETER ZOSA: Repeat, please.

Q Did you get about much and mingle with your fellow citizens in the town of Toledo while the Japanese were there?

A Yes, I met friends at the market place.

Q Did you talk much about who was and who was not guerrillas?

A We didn't talk anything about guerrillas.

Q Did you talk about collaborators?

A No, particularly we talk on how we shall live.

Q Did you ever meet Remedio in the market place?

A No.

Q What did Remedio do? What was his occupation, do you know?

A He was a farmer.

Q Where was his farm in reference to the town of Toledo?

A Barrio Dumlog.

Q How far from Toledo was it?

A About three kilometers from the town.

Q How often did you see or were you accustomed to seeing Remedio?

A I met him when I go to his place.

Q How often?

A I do not see him unless I go to his house.

Q Did you go often?

A Very seldom.

Q Then you really don't know whether Remedio was guerrilla or collaborator or just a peaceful farmer, do you?

A He was an obedient boy, and was not taking part in any guerrilla activities.

Q How do you know that? You didn't see him very often.

A I know it because I went to his house.

Q But in between the times you went to his house -- it was not very often, in fact, was very seldom--he could have been engaged in guerrilla activities. You have no knowledge of that, have you?

A I do not know.

Q Did any of your relatives or your wife's relatives live in the town of Toledo in and around November 1944?

A Yes.

Q Were any of them ill-treated by the Japanese?

A No.

Q They are all living now?

A Yes.

LT. GORDON: That is all.

REDIRECT EXAMINATION

BY CAPTAIN FISHMAN:

Q As you were standing in your hut looking at the Talisay tree, was the sun on your left?

A (The witness stepped down from the witness stand and turned to face the witness stand and pointed.) Yes, the left.

Q Then the sun was not shining directly in your eyes, was it?

A No.

Q Did the sun interfere with the visibility of the Talisay tree and the soldiers there from where you were?

A No.

RECROSS EXAMINATION

BY LT. GORDON:

Q Alberto, you have met Captain Fishman before today, have you not?

CAPT. FISHMAN: He doesn't know my name.

Q Have you talked to this officer before today about this case(pointing)?

A No.

CAPT. FISHMAN: He has not even looked at me.

WHEREUPON, Interpreter Zosa again translated to the witness as she pointed.

A Yes, I met him.

Q Did you go over the details, the incidents and facts of this case before with that officer before today?

A Yes.

Q Before, when I put these books on the desk to show you where your hut was located and where the tree was located, (Lt. Gordon placed two books on the Interpreters table as he spoke.) you told me that the sun shone in your eyes. When Captain Fishman, that officer (pointing) asked you, you said, no, the sun did not shine in your eyes. Now which answer do you want the Commission to believe?

CAPT. FISHMAN: If the Commission please, I do not remember that the question of counsel was "shining in your eyes". I think it might have been "shone in your face", and that might make a difference to the witness.

LT. GORDON: I will change it to "shining in your face". If the sun can shine in your face and not shine in your eyes, I would like to know.

CAPT. FISHMAN: I should like to have the Reporter read that question. I believe it was taken by the other Reporter who is now out

of the room.

COL. HAUSE: The Commission will take an informal recess until the other Reporter comes in.

WHEREUPON, the Commission stood in informal recess.

COL. HAUSE: The Commission will come to order. Are you familiar with the part of the testimony that is wanted?

REPORTER ARNOLD COHEN: Yes, sir.

"Q In which direction was the sun shining at the time?

A The sun rises here (indicating).

Q I know where it rises and I know where it sets, but I want to know where the sun was when that happened. The sun was in the west, or the northwest; is that right?

A It is the sun that was in the west, just near the place Kanlaon Volcano.

Q Was the sun shining in your eyes when this incident took place?

A I don't see the sun shining.

Q Was the sun shining in your eyes when this incident took place?

A Yes, sir."

COL. HAUSE: That is all. Thank you. Now will the Reporter read back the question that brought up this question we just settled.

WHEREUPON, the question was read by the Reporter as follows:

"Q Before, when I put these books on the desk to show you where your hut was located and where the tree was located, you told me that the sun shone in your eyes. When Captain Fishman, that officer asked you, you said, no, the sun did not shine in your eyes. Now which answer do you want the Commission to believe?"

A I said a while ago that the sun — that I did not — the light of the sun shines in my eyes, but I said that the sun was still shining and gave light.

Q I know the sun was still shining at that time and gave light, but was it shining in your eyes as you told me the first time I put these books on the table?

A I only see the sun, I see the sun giving light to the place.

Q How far did you say that your hut was from the tree?

A More or less fifty. meters.

Q Will you point out to us through this window some distance which you think is about the distance the tree was from your hut?

A (The witness stood and pointed.) From the place where I stand to that nearest tree.

COL. ALLEN: The one with the dirt pile?

A Yes.

Q What is in back of that tree which you point at?

A Behind the tree is a pile of earth, the shovel and the gumamela bush.

LT. GORDON: No further questions.

COL. HAUSE: Any questions by the Prosecution?

CAPT. FISHMAN: No questions.

COL. HAUSE: Any further questions by the Defense?

LT. GORDON: No.

EXAMINATION BY THE COMMISSION

BY COL. BOYKIN:

Q Were there any Japanese soldiers in Toledo in August of 1944?

A Yes, sir.

Q Was it the same group of soldiers who were there in September of 1944?

A No.

Q When did the group or unit that were there in August, leave — on which date?

A I do not remember.

Q Were there two groups at Toledo at the same time?

A The first group was the first to come to Toledo. After they left, another group came to Toledo and occupied Toledo.

Q On which date did the second group arrive at Toledo?

A About the month of September.

Q Was this group known by any name or unit number?

A I do not know.

Q Did anything else happen on the 2nd of September 1944 that you recall?

A No.

Q Did you see anyone else other than the three Japanese soldiers and the man who was executed at the scene of the execution?

A I did not see any Japanese around excepting the three.

Q Did you see any Filipinos?

A Yes, I saw the Filipino, the one that was killed.

Q Did you see any other Filipinos?

A No more.

COL. HAUSE: Any further questions? There appear to be no further questions. The witness will be excused.

CAPT. FISHMAN: Does the Commission wish to begin with another witness?

COL. HAUSE: The Commission will recess until 1330 this afternoon.

WHEREUPON, at 1117 hours the Commission recessed until 1330 hours, at which time the proceedings were as follows:

COLONEL HAUSE: The Commission will be in session.

CAPTAIN FISHMAN: I state for the record that all five members of the Commission, the Accused, Defense Counsel and Prosecution are present.

SEBASTIAN LIBRE

called as a witness by the Prosecution, was sworn and testified as follows through Interpreters Zosa, Batucan, and Villaluz:

DIRECT EXAMINATION

BY CAPTAIN FISHMAN:

Q What is your name?

A Sebastian Libre.

Q How old are you?

A Seventy-nine.

Q What is your occupation?

A Now or in Japanese times?

Q Now.

A Street keeper of the municipality of Toledo.

Q Are you a Filipino citizen?

A Filipino.

Q Where do you live now?

A Toledo.

Q Where did you live in 1944?

A Toledo.

Q Do you know the Accused in this case?

A Tabuo.

COLONEL HAUSE: Will the record show that the witness pointed to the Accused.

Q Do you know a Japanese named Tabuo?

A I know a Japanese called Tabuo because he is my customer on tuba, Filipino beverage.

Q Do you see Tabuo in this court room?

A Yes, I see him.

Q Will you point to him.

A (Pointing.)

Q Is he the first man, the middle man, or the third man at the table?

A In the center.

CAPTAIN FISHMAN: I state for the record that the witness pointed toward the Accused and that the Accused is in the middle.

Q Was Tabuo a member of the Japanese Army?

A He is a member.

Q Do you know a Filipino named Remedio Delica?

A Yes, I know him.

Q Is he living now?

A Already dead. Killed by Tabuo.

Q Were you present when Remedio Delica was killed by Tabuo?

A I saw him on his way with Tabuo while I was on my way to get water from the irrigation well.

Q Did you see when Delica was killed by Tabuo?

A They came from the Japanese garrison to the beach, then to the tree called Magtalisay.

Q When did this happen?

A November 2nd, 1944.

Q Where did it happen?

A Toledo.

Q Where in Toledo?

A At the beach at the foot of Magtalisay tree.

Q Tell the Commission everything that you saw happened then.

A When they reached the foot of the Magtalisay tree, he tied Remedio Delica's neck with the rope.

Q Who tied Remedio Delica's neck with the rope?

A Tabuo.

Q Then what happened?

A After tying his neck he threw the rope that tied his neck to the tree, up in the tree. After throwing the rope through the branch of a tree, they untied his hands and then got a rope and tied his hands around the tree, like this way (demonstrating) and they pulled the rope that tied Delica's neck, and hanged him. I saw that he was hanging with his feet at about that height (indicating).

Q Were his feet hanging off the ground?

A Yes, about that way (indicating).

Q What happened then?

A Tabuo drew his bayonet and bayoneted Delica three times at his abdomen.

Q Then what happened?

A Then he cut off the rope that tied Delica to the tree, cut off the rope that tied his hands. Delica fell to the ground, face down, and the Japanese left the body of Delica and went back to the garrison.

Q Did Delica move after he fell to the ground?

A I saw him move but he died.

Q How do you know he died?

A I was looking at Delica while I was hiding behind some banana plants near the Magtalisay tree.

Q Did you examine his body after the Japanese went away?

A No, I did not.

Q Were there any Japanese with Tabuo at the tree?

A Yes. Yes, there were three and there were five other Japanese who were at the beach farther.

Q How many Japanese were there with Tabuo at the Talisay tree?

A Two.

Q Do you know who they were?

A No.

Q Were they Japanese soldiers?

A Yes.

Q Were the other five Japanese soldiers?

A Yes, they are Japanese soldiers from the garrison.

Q Where were those other five?

A They were at the beach sitting just behind the Municipal Building.

LIEUTENANT GORDON: I didn't get the last part of that question.

THE WITNESS: They were at the beach sitting behind the Municipal Building.

Q What were they doing?

A They were just sitting by the breakwater behind the Municipal Building.

Q Were they completely visible or were parts of their bodies concealed?

A Yes, they can be seen because it is just from the place where I sit until that wall there.

Q Were any parts of the bodies of the five Japanese soldiers

concealed?

A They were partly hidden by the Municipal toilet.

Q Where were you during the killing?

A I was behind some banana plants near the Magtalisay tree.

Q Where was that banana plant?

A This is the root; these are the banana plants (indicating). This is the Magtalisay tree (indicating).

Q Was the banana tree anywhere near the dispensary?

A Yes, it was.

Q Was it anywhere near the tennis court?

A Yes, near the tennis court.

Q Was it between the tennis court and the dispensary?

A Yes, it was in the center of the dispensary and the Municipal Building.

Q What time of day was it that the killing took place?

A Just about half past three on November 2nd, 1944.

Q In the daytime, or the night-time?

A Daytime.

Q Was it about half past three in the afternoon?

A Past three.

Q Was the sun shining?

A Yes.

Q Was the Talisay tree clearly visible from where you were?

A Yes, since there was nothing obstructing.

Q Did the banana tree obstruct your view?

A No obstruction.

Q Were you observing from the side of the banana tree?

A I was standing just behind one banana plant.

Q How could you see if you were behind a banana plant?

A (Indicating) I was standing in such a way that he could not see me but I could see the Talisay tree.

Q Was there anything between the banana plant and the Talisay tree that would obstruct your vision?

A No, nothing.

Q About how far away were you from the Talisay tree?

A (Indicating)The distance from the place I was standing is the distance from here up to that wall.

CAPT. FISHMAN: It is stipulated between the Prosecution and the Defense Counsel that the distance pointed out by the witness is fifty-one feet.

Q Were you looking at the Talisay tree and persons near the tree all during the incident?

A Yes, I looked at them; I wanted to find out what they were going to do with Remedio.

Q Did you know Remedio Delicia before that time?

A Yes, I know him.

Q Did you recognize him at the tree?

A Yes, I know it was Remedio because before that I saw Remedio taken to that Talisay tree.

Q Who was taking Remedio to the tree?

A That one (pointing) and two Japanese soldiers.

Q Did you know any of the other five soldiers that you mentioned?

A No.

Q Do you know Alberto Caballes?

A Yes, I know him.

Q Does he live in Toledo?

A Yes, he is the Chief of Police in Toledo.

Q Did you see Alberto Caballes anywhere in the vicinity of the Talisay tree at the time of the killing of Delicia?

A I saw him but he did not see me.

Q Where was he?

A (Indicating) This was the banana plant here; that is the Magtalisay tree, and that was the hut where he makes salt.

Q Was he in the hut making salt?

A Yes, he was making salt.

Q And he saw the Talisay tree from the hut?

A Yes, because it was just near.

Q Were there any obstructions to the vision between the hut and the Talisay tree?

A No.

Q About how far was the hut from the Talisay tree?

A The place where I stand was the hut and that one there, the sawali wall, was the distance from the hut to the Magtalisay tree.

CAPT. FISHMAN: It is stipulated between the Prosecution and Defense Counsel that the distance pointed out by the witness is approximately ninety feet.

LT. GORDON: May I interrupt, Captain Fishman, and ask if he will point out in that direction (pointing)?

CAPT. FISHMAN: Yes, ask the witness to stand here (indicating), and point out the door to any object that same distance.

A (Witness stood up and pointed.) It is a little farther from this gumamela bush.

Q Are you pointing at the gumamela bush that is behind the tree — at the side of the tree?

A The nearest gumamela bush, this one here (pointing).

Q Do you mean the bush that is near the pile of dirt?

A No, I do not mean that one near the pile of earth, but this one here, the nearest gumamela bush.

CAPT. FISHMAN: It is stipulated between the Prosecution and Defense Counsel that the distance pointed out by the witness is approximately fifty-two feet.

Q Did you see Caballes in his hut during the killing?

A I saw him as he was at the hut making his salt while I was hiding behind the banana plant.

Q Do you think he saw you behind the banana plant?

A No.

Q Why not?

A Because I hid behind the banana plant, and he thought that they were all Japanese soldiers around .

Q On what date did this killing take place?

A November 2nd, All-Souls Day.

Q What year?

A 1944.

Q How do you remember that it happened on November 2nd 1944?

A I remember the exact date; it was November 2nd of 1944.

Q How does it happen that you remember the exact date?

A I remember the date because I take care of the road in Toledo and I always remember this date November 2nd, the year 1944.

Q Why do you always remember that date?

A I remember these because the time the Japanese went to Toledo, September, October, November.

Q When did the Japanese leave Toledo?

A November 4th.

Q How do you knew it was November 4th?

A When they left Toledo that morning the civilians were asked — or rather ordered, to help them in unloading the cargos from their truck .

Q Was that November 4th 1944 that the Japanese left Toledo?

A Yes.

Q Were you ordered to help load the trucks on that date?

A Yes, I was ordered to help them load their things on the truck and if we failed they would bayonet us.

Q Who ordered you to help load the trucks on November 4th?

A It was Daido and his men working for him.

Q What was your occupation in 1944?

A I was a tuba gatherer.

Q What is tuba?

A It is a Filipino beverage which the Japanese like to drink.

Q Are you sure it was Tabuo who killed Remedio Delicia on November 2nd 1944?

A Sure, because I was looking at the killing.

Q Had you ever seen Tabuo before that day?

A Yes, always as he often go to my place, to my house to drink tuba.

Q When is the first time that you remember seeing Tabuo in Toledo?

A September, then October.

Q 1944?

A 1944.

Q When was the last time you saw Tabuo in Toledo?

A When they left Toledo on November 4th.

Q What was he doing when you saw him on November 4th?

A He was loading also his things in the truck.

Q Did Tabuo speak to you on November 4th?

A Yes, he told me that he is leaving Toledo.

Q Did he say where he was going?

A Cebu.

Q Did he say why he was leaving Toledo?

A They will stay altogether in Cebu City.

Q How often during September and October did you used to see Tabuo?

A I cannot count, but he goes several times to drink tuba.

Q About how many times a week did he come to your house?

A If he does not go to Cebu City he goes to my house every day.

Q Did he sometimes used to go to Cebu City?

A Yes, sometimes he stays three days in Cebu City and come back.

Q How do you know that he used to go to Cebu City?

A He will always tell me that that day he cannot drink tuba in this place because he is going to Cebu City.

Q Did he ever pay you for the tuba?

A Sometimes they pay, sometimes they don't. I do not ask him to pay because I am afraid he will cut off my neck.

Q Did Tabuo ever say that he would cut off your neck?

A Yes, he told me that if I failed to give him drink that day he is going to cut off my head.

Q How long would he used to stay in your house when he would come there to drink tuba?

A Sometimes he used to stay in my house half an hour drinking.

Q Did you talk with him while he was in your house?

A Yes, because he speaks Visayan.

Q How do you know that his name was Tabuo?

A Yes, because the Japanese soldiers at Toledo asked to get tuba, said, "Tabuo wants tuba".

Q Did Tabuo ever tell you that his name was Tabuo?

A Yes, he said that he is Tabuo.

Q Did you ever hear the people of the town calling him Tabuo?

A Yes, they call him Tabuo.

Q And are you sure that you saw him in Toledo during the months of September and October from time to time?

A Yes.

Q Was Tabuo well known in Toledo?

A Yes, he was known to everyone that stayed in Toledo.

Q Why was he well known to everyone in Toledo?

A Yes, he was called Tabuo; he was called the Medicine Man, giving treatment to scabies and wounds.

Q Do you remember the first time Tabuo came to your house?

A I couldn't exactly give the day or the date, but he used to go out to our house from the time he arrived in Toledo.

Q Do you know about when he arrived in Toledo?

A September.

Q What year?

A 1944.

Q Do you remember the incident when he came to your house for the first time?

A He was looking for tuba because he knew I was a tuba gatherer.

Q Was anyone with him when he came to your house the first time?

A Yes, he talked to two other Japanese soldiers.

Q Do you know who they were?

A I do not know them but they are all Japanese soldiers.

Q How old was Remedio Delica at the time he was killed?

A 18.

Q Do you know the names of any of the Japanese soldiers in Toledo at the same time?

A No. There were Japanese soldiers in Toledo, but I do not know their names; I only know Tabuo.

Q How does it happen that you do not know the names of any of the other Japanese soldiers?

A I didn't have time to ask their names because I was busy

with my work, taking tuba.

Q Did you ever hear the people of Toledo call any of the Japanese soldiers by name?

A No, I did not.

CAPTAIN FISHMAN: Your witness.

CROSS-EXAMINATION

BY LIEUTENANT GORDON:

Q Are you married, Mr. Libre?

A Yes.

Q Have you a family?

A Yes, but some of my children are going to school.

Q Is your wife living?

A Yes.

Q How many children have you?

A Seven.

Q What are their ages and their sexes?

A Feliciana, 25, female; Librada, 20, Female; Gregorio, 18, male; Belen, 20, female; Epifania, 15, female; Manuel, 12, male; and Paulino, 13, male.

Q Were they all living with you at the time of this incident?

A Yes, we all live together in a house just near the garrison.

Q How far from the garrison would you say your house was?

A The distance of my house from the garrison is the distance from where I sit to that boat there (pointing).

LIEUTENANT GORDON: A distance of about 600 feet.

COLONEL ALLEN: Which boat?

INTERPRETER ZOSA: The blue one.

LIEUTENANT GORDON: It is stipulated that the distance pointed out by the witness was 900 feet.

CAPTAIN FISHMAN: Approximately.

LIEUTENANT GORDON: Approximately.

BY LIEUTENANT GORDON:

Q You mentioned that Remedio was hanged to a Talisay tree on the beach. Was this the only tree on the beach?

A No others, except that Magtalisay tree.

Q This was the only Magtalisay tree?

A The only tree.

Q Was there a stone fence near the beach or around the beach?

A Yes, this Magtalisay tree, and there was a stone fence.

Q Was the stone fence between you and the Talisay tree?

A The fence was a little farther from the place where I stood.

Q Was the fence between you and the tree?

A Yes.

Q How high was this fence?

A It was just as high as this (indicating).

Q Then you would say the fence is about one meter high?

A Approximately one meter because it was partly covered by earth.

COLONEL HAUSE: The Commission will take a ten-minute recess.

(The Commission recessed at 1425 hours until 1435 hours at which time the proceedings were as follows:)

CAPTAIN FISHMAN: I state for the record that all five members of the Commission, the Accused, Defense Counsel, Prosecution, are present.

(TO INTERPRETER) Remind the witness that he is still under oath.

(Discussion ensued between the witness and the interpreter.)

CROSS-EXAMINATION (Cont'd.)

BY LIEUTENANT GORDON:

Q While you were standing behind this banana tree, Mr. Libre, were you on your feet or were you squatting down?

A Standing.

Q Did this fence, which you told me a few minutes ago was about a meter high, interfere with your seeing what happened at the Talisay tree?

A No.

Q You see that man standing in the doorway?

A Yes.

Q Will you tell me what kind of clothes he is wearing?

A Khaki.

Q What color is his hat?

A White.

Q Has he got any insignia or letters or numbers on his hat?

A Yes, here (indicating).

Q Has he got any arms; is he wearing any arms?

A He has a revolver.

Q After Remedio was killed did you see anybody take his body away?

A No.

Q Did you see his body on the next day at that tree?

A He was there, but a few days after he was buried by his mother.

Q How do you know he was buried?

A The mother was looking for him.

Q When you were standing at the banana tree were you looking out towards the sea?

A Yes, because the Magtalisay tree was by the beach near the sea.

Q Did the banana tree shade your eyes from the sun?

A No.

Q Then the sun was shining in your eyes?

A The sun was still shining because it was between three or four o'clock.

Q And was it shining in your eyes?

A Yes, it was daylight; the sun was still shining.

Q Did many of the Japanese soldiers come in and buy tuba juice or drink tuba juice in your place?

A Sometimes Tabuo went there by himself; sometimes with some other Japanese soldiers.

Q Did other Japanese soldiers come there without Tabuo?

A Yes, when Tabuo ordered them to go to the house and get tuba from him.

Q Did any Japanese soldiers other than Tabuo and other than the men he ordered to come there for him ever come to your place for tuba?

A No.

Q Do I understand you to tell me that only Tabuo and his men came to your place for tuba?

A Yes.

Q Did you ever learn the names of his friends?

A No, I did not take pains knowing them.

LIEUTENANT GORDON (To the Interpreter): Take pains?

INTERPRETER ZOSA: Yes.

Q Did they come very often?

A They go there almost every afternoon about five or five-thirty.

Q And yet coming to your place every afternoon the only person's name you learned was Tabuo's.

A Only Tabuo.

Q How well did you know Remedio?

A Before I know Remedio, before the Japanese came, he resided in Loray Song-on, one of the barrios in Toledo.

Q How far from Toledo itself was this barrio?

A About half a kilometer. It is a part of a town.

Q How often did you see Remedio before this incident?

A He grew up in Loray Song-on and when the Japanese came to Toledo they evacuated to Loray Song-on.

Q Who evacuated?

A (No response.)

Q Did you evacuate, Mr. Libre?

A The first time the Japanese came to Toledo.

Q You evacuated. Did you evacuate the first time?

A Yes, we evacuated the early part of April. The Japanese came to Toledo April 10th.

Q When did you come back to Toledo after you evacuated?

A When they surrendered the Japanese soldiers in Toledo and there was an order all civilians must return.

Q When did this order come out; what month in 1944?

A When the Japanese soldiers came to Toledo. I do not remember exactly.

Q Do you remember the month?

A May.

Q What was the date in 1944 that the Japanese left Toledo for the last time?

A November 4th, 1944.

Q How is it that you remember this day exactly and yet you can't tell me when you came back to Toledo after you evacuated?

A It was a few days after All-Souls Day.

Q Do you think that it could have been a week after All-Souls Day?

A All-Souls Day falls November 2nd 1944 and we left Thursday. That would make it November 4th 1944.

Q Was Alberto Caballes Chief of Police in Toledo in 1944?

A No.

Q What was his occupation?

A He was a farmer and his wife was a store keeper in the market at Toledo.

Q Where was Alberto's farm?

A Boloc Boloc, just beyond the church.

Q Did you ever have any occasion to go into the garrison where the Japanese were quartered in October or November in 1944?

Q You evacuated. Did you evacuate the first time?

A Yes, we evacuated the early part of April. The Japanese came to Toledo April 10th.

Q When did you come back to Toledo after you evacuated?

A When they surrendered the Japanese soldiers in Toledo and there was an order all civilians must return.

Q When did this order come out; what month in 1944?

A When the Japanese soldiers came to Toledo. I do not remember exactly.

Q Do you remember the month?

A May.

Q What was the date in 1944 that the Japanese left Toledo for the last time?

A November 4th, 1944.

Q How is it that you remember this day exactly and yet you can't tell me when you came back to Toledo after you evacuated?

A It was a few days after All-Souls Day.

Q Do you think that it could have been a week after All-Souls Day?

A All-Souls Day falls November 2nd 1944 and we left Thursday. That would make it November 4th 1944.

Q Was Alberto Caballes Chief of Police in Toledo in 1944?

A No.

Q What was his occupation?

A He was a farmer and his wife was a store keeper in the market at Toledo.

Q Where was Alberto's farm?

A Boloc Boloc, just beyond the church.

Q Did you ever have any occasion to go into the garrison where the Japanese were quartered in October or November in 1944?

A No, I did not go into the garrison.

Q Do you know whether there were any Japanese officers in town at the same time?

A I was on the farm and I gathered tuba, so I had no time to find out whether there were Japanese officers.

LT. GORDON: That is all.

REDIRECT EXAMINATION

BY CAPT. FISHMAN:

Q You mentioned a stone fence between the banana tree and the Talisay tree?

A Yes, there was.

Q Did that fence interfere in any way with your seeing what went on at the Talisay tree?

A No, it did not obstruct because the fence was covered with soil ; it is white.

Q From your position in back of the banana tree could you see the base of the Talisay tree?

A Yes, I can see it very well because the fence was just at the center of the Talisay and the banana plant.

Q And was the ground at the banana tree higher than the ground at the Talisay tree?

A Yes, it was elevated; I could just see clearly the foot of the Talisay tree.

Q Did the sun prevent you from seeing what was going on at the Talisay tree?

A No, it didn't, because it was so clear and I could see it very well because it was just so far as that wall (pointing).

Q Does November 4, 1944 stand out in your memory?

A Yes.

A No, I did not go into the garrison.

Q Do you know whether there were any Japanese officers in town at the same time?

A I was on the farm and I gathered tuba, so I had no time to find out whether there were Japanese officers.

LT. GORDON: That is all.

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Q And was the ground at the banana tree higher than the ground at the Talisay tree?

A Yes, it was elevated; I could just see clearly the foot of the Talisay tree.

Q Did the sun prevent you from seeing what was going on at the Talisay tree?

A No, it didn't, because it was so clear and I could see it very well because it was just so far as that well (pointing).

Q Does November 4, 1944 stand out in your memory?

A Yes.

Q Why?

A Yes, it was the day the Japanese soldiers left Toledo.

Q Was that a happy day in Toledo?

A They were not as happy, because this Japanese made so many killings in that place.

CAPT. FISHMAN: On cross examination of this witness the Defense Counsel asked the witness to describe certain features of a soldier standing in the doorway of this courtroom. I ask the Defense Counsel to stipulate that the witness was correct when he stated that the soldier had on a khaki uniform, a white hat with an insignia on that hat, and a revolver, and that the soldier was approximately fifty-two feet away from the witness at the time.

LT. GORDON: It is so stipulated.

COL. HAUSE: So enter it into the record.

Q During the Japanese Occupation did Caballes also engage in the business of making salt?

A Yes.

CAPT. FISHMAN: That is all.

COL. HAUSE: Any further questions by the Defense?

LT. GORDON: No questions.

COL. HAUSE: Questions by the Commission? There seem to be no further questions. The witness will be excused.

AURELIA DELIBERIO DELICA

called as a witness by the Prosecution, being first sworn was examined and testified through Interpreters Zosa, Batucan and Villaluz as follows:

DIRECT EXAMINATION

BY CAPT. FISHMAN:

Q What is your name?

A My name is Aurelia Deliberio Delica. (The witness answered in English.)

Q Do you prefer to speak in Visayan or in English?

A Visayan.

Q Do you speak Visayan better than you do English?

A I prefer Visayan.

Q How do you spell your last name?

A D-e-l-i-a.

CAPT. FISHMAN: If the Commission please, I should like to have the Interpreter show the --

A D-e-l-i-c-a.

Q Did your son Remedic spell his last name that same way?

A Yes.

CAPT. FISHMAN: If the Commission please, the name is misspelled in the Charge and Specification. There it is spelled D-e-l-i-c-i-a. I should like to have that name in the Charge and Specification corrected to be spelled D-e-l-i-c-a.

COL. HAUSE: What about the first name; is that correct, Remedio?

Q What was your son's first name?

A I do not understand.

Q What was your son's first name?

A Remedio.

CAPT. FISHMAN: The spelling of the son's first name will be satisfactory.

COL. HAUSE: Any objection on the part of the Defense?

LT. GORDON: None.

COL. HAUSE: The record will be so corrected as to show the spelling of Delicia, D-e-l-i-c-a. From here on the record will show that the proper spelling is D-e-l-i-c-a and the Charge and Specification will be corrected to show the proper spelling.

Q How old are you.

A 44.

Q Are you a Filipina civilian?

A Filipina.

Q Where do you live now?

A Toledo, Cebu.

Q Where did you live in 1944?

A The mountains of Sung-On.

Q How far was that from Toledo?

A About eight kilometers.

Q Do you now live in the city of Toledo or in a barrio of Toledo?

A In the barrio.

Q What barrio?

A Sangi.

Q Did you have a son named Remedio?

A Yes, I have. a son Remedio Delica.

Q Is he now living?

A He is dead.

Q How old was he at the time of his death?

A 18.

Q Whon did you soo him last alive?

A October 28th 1944.

Q Whore did you soo him on October 28th 1944?

A When he left from Sangi to Dumlog.

Q What was his occupation at that time?

A He was a farmer.

Q Did he live with you in your home?

A Yes.

Q Did he engage in guerrilla activities?

A No, he was a civilian.

Q How do you remember that day was October 28th when you saw him last alive?

A Because it was the last time I saw him because he was arrested by the Japanese soldiers and he was taken to the Japanese Garrison in Toledo.

Q When did you see him after October 28th?

A I didn't see him any more. I went to the town when I learned that he was arrested by the Japanese soldiers, I went into the town of Toledo and asked a friend of mine, Marcelina, if it was really true that my son was arrested by Japanese soldiers, and Marcelina informed me that he was kept prisoner in the Japanese Garrison. I went again and was informed that he was really in the prison cell.

Q Did Marcelina tell you who arrested your son?

A I asked her and I was told that it was Tabuo who arrested my son.

Q When you say Tabuo, do you mean the Japanese soldier whom they call Dr. Tabuo?

A Yes, he.

Q When next did you ever see your son alive after that time? I will withdraw the question. Did you ever see your son alive after October 28th?

A No; dead.

Q Did you ever see his dead body after October 28th?

A Yes, I saw his dead body after the Japanese left Toledo and went to Cebu City.

Q About what date was that that you saw your son's dead body?

A November 4th 1944 when there was no more Japanese soldiers in Toledo.

Q Where did you find your son's body?

A Just near at the beach at the foot of the Magtalisay tree.

Q Describe the condition of your son's body at the time you saw it.

A His neck was tied with a rope, his tongue was hanging, his hands were tied with a rope, the place at his back was eaten by the dog. I saw three bayonet wounds at his back because he was lying face down, and the place in his right leg was eaten by dog, too; then I was able to get civilians, friends of mine, to help me bury the body.

Q Where did you bury the body?

A Right on the spot where he was killed.

Q Did you see any wounds in the front part of his body?

A He was lying face down so I could just see the three bayonet wounds on his back.

Q How did you recognize the body as that of your son?

A I recognized he was really my son because he has still his wristwatch in his pocket.

Q Did you see his face?

A Yes, I saw his face.

Q Did you recognize his face as that of your son?

A Yes, it was my son's face.

Q How did you find out that your son was killed?

A I know it because I was informed that my son was killed.

Q Who informed you?

A The civilians.

Q Did Alberto Caballes inform you?

A Yes, he told me that Remedio, my son, was killed by the Japanese.

Q Did you ever see Tabuo in 1944?

A I didn't go to the town of Toledo because I am so much afraid of Japanese.

Q Did you ever see Tabuo in 1944?

A Only this time that I see Tabuo.

Q By, "this time," what do you mean?

A Yes. I saw him at his camp.

CAPTAIN FISHMAN: That is all.

CROSS-EXAMINATION

BY LIEUTENANT GORDON:

Q Mrs. Delica, do I understand you to say that you were in your house when the Japanese came to take your son away

on October 28, 1944?

A I was in the mountains.

Q Was your son in the mountains with you?

A Yes, he went to Barrio Dumlog to herd our carabao.

Q Then you were not around or you were not with Remedio when he was taken in custody by the Japanese soldiers?

A No.

Q How did you find out that he was taken in custody by the Japanese soldiers?

A He did not return and I was informed that he was arrested by the Japanese soldiers and was taken to the Japanese garrison.

Q Was Remedio at home all the time before he was taken in custody by the Japanese soldiers?

A Yes.

Q Did he ever go out on expeditions with other Filipinos?

A No, he is afraid of the Japanese soldiers.

Q Did he own a gun?

A No.

LIEUTENANT GORDON: That's all.

COLONEL HAUSE: Any further questions?

CAPTAIN FISHMAN: No, sir.

COLONEL HAUSE: Questions by members of the Commission?

There appear to be none. The Witness will be excused.

(Witness excused.)

CAPTAIN FISHMAN: The Prosecution rests.

COLONEL HAUSE: Is the Defense prepared to continue at this time?

LIEUTENANT GORDON: Yes, sir, the Defense is ready to proceed.

COLONEL HAUSE: All right, proceed.

The Commission will take a ten minute recess.

(The Commission recessed at 1525 hours until 1535 hours, at which time the proceedings were as follows:)

COLONEL HAUSE: The Commission will be in session.

CAPTAIN FISHMAN: I state for the record that all five members of the Commission, Accused, Defense Counsel and Prosecution are present.

LIEUTENANT GORDON: The Defense is ready to proceed.

COLONEL HAUSE: You may proceed.

LIEUTENANT GORDON: I call as the first Witness for the Defense, the Accused himself.

CHIKANORI TABUO

the Accused, a Witness in his own behalf, was sworn and testified as follows through Interpreters Nimura, Baba and Ushijima:

DIRECT EXAMINATION

BY LIEUTENANT GORDON:

Q In the year of 1944, were you a member of the Japanese Imperial Army?

A Yes.

. . . . .

Q In the month of August, 1944, were you stationed in the town of Toledo on the Island of Cebu in the Philippines?

A Yes.

Q What was your rank in the month of August 1944?

A Corporal.

Q Were you ever promoted to a higher rank and, if so, what?

A I was promoted to the rank of sergeant on May 15, 1945.

Q When did you first come to the town of Toledo?

A The latter part of July 1944.

Q Who was your commanding officer at that time?

A First Lieutenant Kawahara.

Q What was the name or number of your unit?

A 173rd Infantry Battalion.

Q When did you leave Toledo?

A On 2 September 1944.

Q How is it that you remember that it was the second of September 1944?

A I remember that date because that is foremost in my mind.

Q Why is it foremost in your mind?

A Because I had fear going into the battle.

Q Where did you go when you left Toledo?

A To Cebu City.

Q What did you do in Cebu City?

A I received tank training.

Q Was September 2nd 1944 the day you volunteered for this tank training?

A No, I went on orders of the company commander.

Q How long did you take this tank training in Cebu?

A One month.

Q And then what happened?

A I went to Guadalupe and worked in the dispensary — I was put into the dispensary.

Q Why were you put into a dispensary?

A Because I had jaundice — yellow jaundice.

Q What was the first day that you remember that you came to the dispensary?

A 26th October 1944.

Q How long did you remain in the dispensary with yellow jaundice?

A From then until the latter part of December 1944.

Q Were you confined to your bed all this time?

A Yes, I was not able to walk for over one month.

Q And while you were in the hospital did you — I will withdraw the question. While you were a patient at the dispensary did you ever go back and visit Toledo?

A No.

Q After you left Toledo the latter part of August 1944 did you ever go back to Toledo?

A No.

Q After you were cured from the hospital, where did you go?

A I returned to my company in Babak.

Q And where did your company go from Babak?

A Then we went into the hills upon orders on March 16 1945.

Q Who was your company commander then?

A First Lieutenant Kawahara.

Q When did you surrender to the American forces?

A On 29 August 1945.

Q While you were in Toledo what were your duties?

A Security and guarding.

Q What part of the town did you guard?

A All of the town.

Q Did you while in Toledo know a man by the name of Remedio Delica?

A No.

Q While in the town of Toledo did one of your duties include arresting Filipino guerrillas?

A No.

Q While in the town of Toledo did you have occasion to go out in punitive expeditions?

A No.

Q The proceedings in court this morning have been explained to you by Taguchi, the civilian interpreter. Do you know or did you remember meeting either of the two witnesses who appeared in court this morning, while you were in Toledo?

A No.

Q While you were in Toledo did you have occasion to go to the store of Sebastian Libre and buy tuba from him, or take tuba from him?

A No.

Q Did you ever hear about the killing of this man Remedio Delica while you were in Toledo?

A No, I have not heard.

Q When was the first time that you recall ever hearing about this incident which is alleged to have taken place in Toledo on the 2nd of November 1944?

A I first heard about it at the camp in Colombo when persons came to question me about the incident.

Q And the first time you heard about this incident is when you were a prisoner of war; is that right?

A I first learned about it after I was in the camp in Colombo.

Q Will you tell me again when you left Toledo to go to anti tank gun school at Cebu City?

A 2nd of September 1944.

LT. GORDON: That is all.

CROSS EXAMINATION

BY CAPT. FISHMAN:

Q Were you a squad leader in your organization?

A Yes.

Q How many men did you have under you?

A Seven.

Q Was your company an infantry company?

A Yes.

Q How did you happen to become a squad leader?

A According to the years in service we receive our promotions. That is, in the Japanese Army.

Q Do promotions have anything to do with merit in the Japanese Army?

A No.

Q Do you know why you were selected for anti tank training?

A I do not know.

Q You said that on September 2nd 1944 you were afraid. Why were you afraid?

A Tank training was a fearful thing, and was something which I did not want to go into.

Q Do you know how to use a bayonet?

A No.

Q You have never used a bayonet?

LT. GORDON: I object. The civilian interpreter tells me there is a mistranslation of that.

A Yes, I know the way by Japanese training methods.

Q How much training have you had in the use of a bayonet?

A I received no special training, just for bayonets.

Q But you have received instruction including the use of the bayonet; is that right?

A Yes, I received that in recruit training.

Q How long were you a squad leader?

A I became squad leader after I came to the Philippines, and that was the first of March 1944.

Q What were your duties as a squad leader?

A To educate my subordinates well.

Q How many subordinates did you have?

A Seven.

Q Then you and your subordinates add up to a total of eight; is that right?

A Yes.

Q When did you finish your anti tank training?

A On the 5th of October.

Q When did you enter the dispensary?

A The 26th of October.

Q Where was this dispensary located?

A In Guadalupe.

Q How far is Guadalupe from Cebu City?

A It is within the city limits.

Q How far is Guadalupe from Toledo?

A I do not know just how far, but it is on the west coast.

Q About how many kilometers is Toledo from Cebu City?

A About fifteen ri. That is a measure of distance in the Japanese.

Q Can you tell how far a ri is?

INTERPRETER: 2.44 miles or 3.927 kilometers.

Q Is there an improved road between Toledo and Cebu City?

A Yes.

Q What did you do between the 5th of October and the 26th of October?

A I was in the liaison office of the headquarters.

INTERPRETER: That "liaison office" might be translated "communication office".

Q What were you doing there?

A I was resting there.

Q Why were you resting there?

A Because the automobile had been burned and I could not return to Toledo.

Q Was there only one automobile belonging to the Japanese Army in Cebu City at that time?

A Do you mean in the Army?

Q In the battalion headquarters?

A There were five; two were destroyed and three were remaining.

Q Then why could not you return to Toledo?

A I could not return because I went to the dispensary from the communications office.

Q Why could not you return between the 5th of October and the 26th of October?

A Because the automobiles were burned and we could not go out.

Q Weren't there any automobiles left at all there?

A There were no more in the unit.

Q By your unit, do you refer to the battalion?

A Yes.

Q Then your battalion had no automobiles between the 5th of October and the 26th of October; is that right?

A That's right.

Q Were there any other army units in Cebu City at that time?

A I believe there were others.

Q Did they have any automobiles ?

A I do not know about the other units.

Q Did you see any automobiles in Cebu City between 5 October and 26 October?

A Yes, I have seen.

Q How many did you see?

A I just saw them passing on the road. I do not know how many.

Q If your battalion had no automobiles, how did it obtain supplies?

A I do not know.

Q Did anyone leave Toledo with you on the 2nd of September?

A Yes.

Q How many?

A Twenty to thirty.

Q Why were they going to Cebu City?

A They all went for tank training and for liaison.

Q Are any of them now alive?

A Yes, there are several.

Q Who?

A At present there is only one whose name I remember, whom I know.

Q What is his name?

A Akiji Kawano.

Q Is he alive now?

A We separated at Leyte so I do not know where he is.

Q What was his rank?

A At that time he was a Leading Private.

Q Do you remember the names of any of the others that went with you?

A I do not.

Q What organization were they from?

A They were also the Onishi Unit.

Q Is that your unit also?

A Yes.

Q Were any of them from your company?

A Yes, Kawahara was in the same company.

Q Was there anyone else from your company?

A Yes, there were others from the same company but of a different platoon and although I know them by face I do not know their names.

Q How long were you in the Kawahara company?

A I went to Balamban with Kawahara Unit the latter part of February and remained with them until the latter part of July.

Q How many men were there in the company?

A I do not know.

Q About how many?

A I was not concerned with the personnel so I do not know how many there were.

Q How many men are there in an average infantry company in the Japanese Army?

A About 170.

Q What was your condition of health on 5 October?

COLONEL HAUSE: Let us have the years stated when we are naming months.

A I still had some strength yet.

Q Was that 5 October 1944?

A Yes.

Q And from 5 October 1944 to 26 October 1944 you rested at Guadalupe, is that right?

A Yes, at the unit near that place.

Q When did you become ill?

A I began to feel sick from about the 20th of October.

Q Do you know what made you sick?

A I do not know the cause but I had become very thin by then.

Q Did your battalion have more than one dispensary in Guadalupe in October, 1944?

A Yes, there was only one in Guadalupe.

Q On what day did you enter the dispensary in Guadalupe?

A October 26.

Q Who admitted you to the dispensary?

A I was taken there from the liaison office.

Q At the dispensary who admitted you to the dispensary?

A At the dispensary I was told by a medical noncommissioned officer to remain there.

Q What was his name?

A Sergeant Major Morita.

Q Did you see an officer at the dispensary on that day?

A An officer did come on that day but I do not remember clearly who it was.

Q Do you remember the name of any medical officer that you saw at the dispensary at Guadalupe?

LIEUTENANT GORDON: Please state the time.

Q From the date that you entered to the date that you left.

A Yes, the unit doctor, Tanji Kimura, First Lieutenant.

Q When did you first see Lieutenant Kimura there?

A At that time my mind was not too clear but I believe it was two or three days after I entered the infirmary.

Q You are sure that you did not see him on the date that you entered the dispensary?

A I am sure.

LIEUTENANT GORDON: What was the answer?

INTERPRETER BABA: "I am sure."

Q How can you remember that the date on which you entered the hospital was 26 October 1944?

A I asked the patient sleeping next to me what date it was and he told me it was the 26th -- and he told me the date.

Q What date did he tell you?

A That fellow said it is the 25th or the 26th.

Q Of what month and what year?

A October, 1944.

Q How long did you remain in the dispensary?

A I was there from the latter part of October to the latter part of December.

Q Did you ever leave the dispensary during that period?

A No.

Q Are you sure?

A Yes, I am sure.

Q Are you sure that you remained there until the latter part of December, 1944?

A Yes; Lieutenant Kimura would know that.

Q Do you know that?

A Yes, that is a fact.

Q When you first entered the dispensary were you confined to bed?

A No, I was not on a bed but just on the floor.

Q Did you use the floor as a bed?

A Yes.

Q How long did you remain lying on the floor before you were able to walk?

A For about a month.

Q How can you remember that the date on which you entered the hospital was 26 October 1944?

A I asked the patient sleeping next to me what date it was and he told me it was the 26th -- and he told me the date.

Q What date did he tell you?

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A Yes, that is a fact.

Q When you first entered the dispensary were you confined to bed?

A No, I was not on a bed but just on the floor.

Q Did you use the floor as a bed?

A Yes.

Q How long did you remain lying on the floor before you were able to walk?

A For about a month.

Q Until about what date?

A The latter part of November.

Q 1944?

A Yes.

Q You were unable to walk from the 26th of October to the latter part of November 1944, is that right?

A That is right.

Q Was there anyone else in the room with you?

A (No response.)

Q What was his rank?

LIEUTENANT GORDON: What was the answer to the previous question?

A An Intendance noncommissioned officer, Sergeant Mitsuyoshi Akita.

Q Was there anyone else in the room with you at any time?

A There were twenty to thirty other patients in the room.

Q Do you remember the names of any of the others?

A I was from a different unit so I do not remember the names.

Q Do you know where Akita is now?

A From Cebu we went together to Leyte as prisoners of war, and we separated there so I do not know.

Q While you were at Guadalupe were you ever in a room where there was only one other patient?

A Yes, I was once alone with Akita.

LT. GORDON: What is that; "once alone with Akita"?

A With Akita; just the two of us.

Q How long were you in a room with only Akita?

A Akita came in about ten days after I did and I was with him all the time after that.

Q During what period of time were you and Akita the only ones in the room?

A Until the latter part of December.

Q From what time on?

A From the time Akita came, about ten days after I was put into the infirmary, about the 10th of November, that is, Akita came in about the 10th of November and from then on.

Q From the 10th of November until the 10th of December you were alone with Akita in a room; is that right?

A Yes.

COL. HAUSE: At this time the Commission will adjourn until 0830 hours tomorrow morning, in the same room.

WHEREUPON, at 1630 hours 2 April 1946, the Commission adjourned.

R E S T R I C T E D

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

AG 000.5 (5 Dec 45) LS

APO 500
5 December 1945

SUBJECT: Regulations Governing the Trials of Accused War Criminals.

TO : Commander-in-Chief, United States Army Forces, Pacific, APO 500
Commanding General, Sixth Army, APO 442
Commanding General, Eighth Army, APO 343
Commanding General, XXIV Corps, APO 235

The following rules and regulations will govern the trials of persons, units and organizations accused as war criminals:

1. ESTABLISHMENT OF MILITARY COMMISSIONS.

a. General. Persons, units and organizations accused as war criminals will be tried by military commissions to be convened by, or under the authority of, the Supreme Commander for the Allied Powers.

b. Number and Types. The commissions will be established dependent upon the number, nature of the offenses involved and the offenders to be tried. Such commissions may include, among others, international military commissions consisting of representatives of several nations or of each nation concerned, appointed to try cases involving offenses against one (1) or more nations.

2. JURISDICTION.

a. Over Persons. The military commissions appointed hereunder shall have jurisdiction over all persons charged with war crimes who are in the custody of the convening authority at the time of the trial.

b. Over Offenses.

(1) Military commissions established hereunder shall have jurisdiction over all offenses including, but not limited to, the following:

(a) The planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

Prosecution's Exhibit No. 1
U.S.A. vs Chikanori Tabuo
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R E S T R I C T E D

(b) Violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory; murder or ill-treatment of prisoners of war or internees or persons on the seas or elsewhere; improper treatment of hostages; plunder of public or private property; wanton destruction of cities, towns or villages; or devastation not justified by military necessity.

(c) Murder, extermination, enslavement, deportation and other inhuman acts committed against any civilian population before or during the war, or persecutions on political, racial or religious grounds in execution of, or in connection with, any crime defined herein, whether or not in violation of the domestic laws of the country where perpetrated.

(2) The offense need not have been committed after a particular date to render the responsible party or parties subject to arrest, but in general should have been committed since or in the period immediately preceding the Mukden incident of September 18, 1931.

3. MEMBERSHIP OF COMMISSION.

a. Appointment. The members of each military commission will be appointed by the Supreme Commander for the Allied Powers, or under authority delegated by him. Alternates may be appointed by the convening authority. Such alternates shall attend all sessions of the commission, and in case of illness or other incapacity of any principal member, an alternate shall take the place of that member. Any vacancy among the members or alternates, occurring after a trial has begun, may be filled by the convening authority, but the substance of all proceedings had and evidence taken in that case shall be made known to that new member or alternate in open court before the trial proceeds.

b. Number of Members. Each commission shall consist of not less than three (3) members.

c. Qualifications. The convening authority shall appoint to the commission persons whom he determines to be competent to perform the duties involved and not disqualified by personal interest or prejudice, provided that no person shall be appointed to hear a case which he personally

investigated, nor if he is required as a witness in that case. A commission may consist of Army, Navy or other service personnel, or of both service personnel and civilians. One specially qualified member shall be designated as the law member whose ruling is final insofar as concerns the commission on an objection to the admissibility of evidence offered during the trial.

d. Voting. Except as to the admissibility of evidence, all rulings and findings of the commission shall be by majority vote, except that conviction and sentence shall be by the affirmative votes of not less than two-thirds (2/3) of the members present.

e. Presiding Member. In the event that the convening authority does not name one of the members as the presiding member, the senior officer among the members of the commission present shall preside, or such other member as the senior officer may designate.

4. PROSECUTORS.

a. Appointment. The convening authority shall designate one or more persons to conduct the prosecution before each commission. Where offenses involve nationals of more than one nation, each nation concerned, in the discretion of the convening authority, may be represented among the prosecutors.

b. Duties. The duties of the prosecutors are:

(1) To prepare and present charges and specifications for reference to a commission.

(2) To prepare cases for trial and to conduct the prosecution before the commission of all cases referred for trial.

5. POWERS AND PROCEDURE OF COMMISSIONS.

a. Conduct of the Trial. A commission shall:

(1) Confine each trial strictly to a fair, expeditious hearing on the issues raised by the charges, excluding irrelevant issues or evidence and preventing any unnecessary delay or interference.

(2) Deal summarily with any contumacy or contempt, imposing any appropriate punishment therefor.

(3) Hold public sessions except when otherwise decided by the commission.

(4) Hold each session at such time and place as it shall determine, or as may be directed by the convening authority.

b. Rights of the Accused. The accused shall be entitled:

(1) To have in advance of trial a copy of the charges and specifications clearly worded so as to apprise the accused of each offense charged.

(2) To be represented, prior to and during trial by counsel appointed by the convening authority or counsel of his own choice, or to conduct his own defense.

(3) To testify in his own behalf and have his counsel present relevant evidence at the trial in support of his defense, and cross-examine each adverse witness who personally appears before the commission.

(4) To have the substance of the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them.

c. Witnesses. The Commission shall have power:

(1) To summon witnesses and require their attendance and testimony under penalty; to administer oaths or affirmations to witnesses and other persons and to question witnesses.

(2) To require the production of documents and other evidentiary material.

(3) To delegate to the Prosecutors appointed by the convening authority the powers and duties set forth in (1) and (2), above.

(4) To have evidence taken by a special commissioner appointed by the commission.

d. Evidence.

(1) The commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or such as in the commission's opinion would have probative value in the mind of a reasonable man. The commission

shall apply the rules of evidence and pleading set forth herein with the greatest liberality to achieve expeditious procedure. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted:

(a) Any document irrespective of its classification which appears to the commission to have been signed or issued by any officer, department, agency or member of the armed forces of any government without proof of the signature or of the issuance of the document.

(b) Any report which appears to the commission to have been signed or issued by the International Red Cross or a member thereof, or by a doctor of medicine or any medical service personnel, or by an investigator or intelligence officer, or by any other person whom the commission considers as possessing knowledge of the matters contained in the report.

(c) Affidavits, depositions or other signed statements.

(d) Any diary, letter or other document, including sworn or unsworn statements, appearing to the commission to contain information relating to the charge.

(e) A copy of any document or other secondary evidence of its contents, if the original is not immediately available.

(2) The commission shall take judicial notice of facts of common knowledge, official government documents of any nation, and the proceedings, records and findings of military or other agencies of any of the United Nations.

(3) A commission may require the prosecution and the defense to make a preliminary offer of proof, whereupon the commission may rule in advance on the admissibility of such evidence.

(4) If the accused is charged with an offense involving concerted criminal action upon the part of a military or naval unit, or any group or organization, evidence which has been given previously at a trial resulting in the

(5) The witnesses and other evidence for the prosecution shall be heard or presented. At the close of the case for the prosecution, the commission may, on motion of the defense for a finding of not guilty, consider and rule whether the evidence before the commission supports the charges against the accused. The commission may defer action on any such motion and permit or require the prosecution to reopen its case and produce any further available evidence.

(6) The defense may make an opening statement prior to presenting its case. The presiding member may, at this or any other time, require the defense to state what evidence they propose to submit to the commission, whereupon the commission may rule upon the admissibility of such evidence.

(7) The witnesses and other evidence for the defense shall be heard or presented. Thereafter, the prosecution and defense may introduce such evidence in rebuttal as the commission may rule admissible.

(8) The defense, and thereafter the prosecution, shall address the commission.

(9) The commission thereafter shall consider the case in closed session and unless otherwise directed by the convening authority, announce in open court its judgment and sentence, if any. The commission may state the reasons on which the judgment is based.

f. Record of Proceedings. Each commission shall make a separate record of its proceedings in the trial of each case brought before it. The record shall be prepared by the prosecutor under the direction of the commission and submitted to the defense counsel. The commission shall be responsible for its accuracy. Such record, certified by the presiding member of the commission or his successor, shall be delivered to the convening authority as soon as possible after the trial.

g. Sentence. The commission may sentence an accused, upon conviction, to death by hanging or shooting, imprisonment for life or for any less term, fine or such other punishment as the commission shall determine to be proper. The commission may also order confiscation of any property of a convicted accused, deprive that accused of any stolen property or order its delivery to the Supreme Commander for the Allied Powers for disposition as he shall find to be proper, or may order restitution with appropriate penalty in cases of default.

h. Approval of Sentence. No sentence of a military commission shall be carried into effect until approved by the officer who convened the commission, or his successor. Such officer shall have authority to approve, mitigate, remit in whole or in part, commute, suspend, reduce or otherwise alter the sentence imposed, or (without prejudice to accused) remand the case for rehearing before a new military commission; but he shall not have authority to increase the severity of the sentence. No sentence of death shall be carried into execution until confirmed by the Supreme Commander for the Allied Powers. Except as herein provided, the judgment and sentence of a commission shall be final and not subject to review.

6. RULE MAKING POWER.

Supplementary Rules and Forms. Each commission shall adopt rules and forms to govern its procedure, not inconsistent with the provisions hereof, or such rules and forms as may be prescribed by the convening authority or by the Supreme Commander for the Allied Powers.

By command of General MacARTHUR:

H. W. ALLEN,
Colonel, A.G.D.,
Asst Adjutant General.

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By command of General MacARTHUR:

H. W. ALLEN,
Colonel, A.G.D.,
Asst Adjutant General.

Before The
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

* * * * * * * * * * * * * * * * * *

UNITED STATES OF AMERICA

-vs-

CHIKANORI TABUO

* * * * * * * * * * * * * * * * * *

PUBLIC TRIAL

VOLUME II

PAGES 86 to 154

DATE 3 April 1946

MANILA, P. I.

COPY NO. 4

AUTHENTICATION

THIS CERTIFIES that this Volume is a part of the Proceedings of the Military Commission appointed by Letter Order, AG 000.5 (12 Feb 46) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 12 February 1946, Subj: Trial of Chikanori Tabuo; 1st Indorsement to basic letter, AG 000.5 (12 Feb 46) LS General Headquarters, United States Army Forces, Pacific, dated 12 February 1946; par. 2 of Special Order No. 76, Headquarters, United States Army Forces Western Pacific, dated 1 April 1946; and letter dated 1 April 1946, Subj: Summoning and Swearing Witnesses for Tabuo's Trial, in the trial of the case of the United States of America v. Chikanori Tabuo.

Dated 6 April 1946.

Francis A. Hause

FRANCIS A. HAUSE
Colonel, CAC, USA
President of Commission

BEFORE THE
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces,
Western Pacific

* * * * * * * * * * * * * * * * *

UNITED STATES OF AMERICA

-vs-

CHIKANORI TABUO

* * * * * * * * * * * * * * * * *

PUBLIC TRIAL

Court No. 1
High Commissioner's Residence,
Manila, P. I.
3 April 1946

Met, pursuant to adjournment, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL FRANCIS A. HAUSE, CAC, PRES. & LAW MEMBER
LIEUTENANT COLONEL THOMAS H. ALLEN, INF (Armd)
LIEUTENANT COLONEL STARLEY N. BOYKIN, JR. INF.
CAPTAIN WILLIAM O. LUTZ, INF.
CAPTAIN GLENN W. HENDRICKS, FA

APPEARANCES:

FOR THE PROSECUTION:

CAPTAIN ABRAHAM FISHMAN, JAGD, Chief Prosecutor
1ST LIEUTENANT PRUDENCIO V. CASTILLO, JAGD

FOR THE DEFENSE:

1ST LIEUTENANT IVAN H. GORDON, TC

OFFICIAL INTERPRETERS FOR THE COMMISSION:

VISAYAN:

FILOMENA ZOSA
JOSE BATUCAN
PRAXEDIO VILLALUZ

JAPANESE:

2ND LIEUTENANT RAYMOND NIMURA
T/3 GEORGE S. BABA
T/4 GEORGE USHIJIMA

OFFICIAL REPORTERS FOR THE COMMISSION:

WILLIAM E. RICE
ARNOLD COHEN

I N D E X

WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS	COM.
CHIKANORI TABUO		86	99		
HAJIME KAWAHARA	101	110	133		
KANJI KIMURA	134	140	150	152	

EXHIBITS

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P R O C E E D I N G S

The Commission convened, pursuant to adjournment, at 0830 hours 3 April 1946, in Court No. 1, High Commissioner's Residence, Manila, P.I.

COL. HAUSE: The Commission will be in session.

CAPT. FISHMAN: Sir, all five members of the Commission, the Accused, Defense Counsel and Prosecution are present.

COL. HAUSE: The Prosecution may resume its examination of the witness.

WHEREUPON, Chikaneri Tabuo, the Accused, resumed his place on the witness stand, and being reminded that he was still under oath testified as follows through interpreters Nimura, Baba and Ushijima:

CROSS EXAMINATION (CONT.)

BY CAPT. FISHMAN:

Q While you were in the dispensary at Guadalupe how many times did you see Lieutenant Kimura?

A He used to examine me very frequently.

Q How many times did you talk to him?

A Do you mean the doctor?

Q How many times did you talk to Lieutenant Kimura while you were at Guadalupe?

A I do not remember how many times I spoke to him.

Q Did you talk to him on numerous occasions while you were in the dispensary at Guadalupe?

A Whenever he came to examine me I spoke to him.

Q What were your symptoms at the time you were admitted to the dispensary at Guadalupe?

A The symptoms were that I became yellow all over.

Q Did you have any other symptoms?

A My stomach was not very well.

Q Anything else?

A And I had a boil in my crotch. and I had the doctor operate on it.

Q Is that all the symptoms you had when you entered the dispensary at Guadalupe?

A Yes.

Q What treatments were given to you at the dispensary at Guadalupe?

A I was operated on the crotch, and for the jaundice I received injections.

Q How often?

A Frequently; I do not remember just how much.

Q Did you receive any other treatment?

A No.

Q How often did you see Sergeant Hisashi Morita at the dispensary in Guadalupe while you were sick there?

A I saw him all the time because his room was visible from my room.

Q Did you see him every day?

A Yes, because his room is just next to mine.

Q Did he ever come into your room?

A Yes, there are times when he brought medicine in.

Q About how many times did he come into your room while you were there?

A I remember clearly once. Others I do not remember.

Q Did he come into your room more than once?

A Yes, this once I remember because he brought me medicine, but the others I do not remember very well.

Q But you are sure that he came into your room on several occasions; is that right?

A I just remember once.

Q Did he talk to you when he came into your room at that time?

A No, he just gave me the medicine and went out.

Q How many times did he give you medicine while you were in the dispensary at Guadalupe?

A He brought medicine to my room just once.

Q When was the first time that you saw Morita at the dispensary at Guadalupe?

A When I entered the dispensary.

Q When was the last time that you saw Morita at the dispensary at Guadalupe?

A When I returned to my company.

Q When was that?

A In the latter part of December.

Q Did you see Sergeant Morita in the dispensary at Guadalupe every day between October 26 1944 and the latter part of December 1944?

A Yes, while I was confined for about a month I saw him every day.

Q Did you see him every day in the dispensary at Guadalupe. during the month of November 1944?

A Yes, I saw him from my room.

Q You are sure that you saw him every day in the dispensary during the month of November 1944, is that right?

A Yes, when Sergeant Morita was there I saw him every day.

Q Well, was he there every day?

A When I looked he was there.

Q Did you look every day to see whether he was there during the month of November 1944?

INTERPRETER BABA: What was the question?

(The last question was read by the reporter.)

A I didn't look to see if he was there but whenever I looked toward the dispensary I could see him if he was there.

Q On how many days in the month of November 1944 did you see Morita at the dispensary in Guadalupe?

A I don't remember clearly. When Morita was there I saw him every day.

Q Are you sure that Morita was at the dispensary in Guadalupe from time to time all during the month of November 1944?

A Yes.

Q Did you see Morita at the dispensary in Guadalupe from time to time during the month of December 1944?

A In November I was better and I had been ordered in the care of some patients so there were times when I saw him and there were times when I did not see him.

CAPTAIN FISHMAN: Was that November?

INTERPRETER BABA: December, I should say.

Q About when was the last time in December that you saw Morita at the dispensary in Guadalupe?

A At the time I returned to my company.

Q What date was that?

A Twenty-eighth of December.

Q What year?

A 1944.

Q Was Morita living in the same tent with you at the Luzon Prisoner-of-War Camp No. 1?

A Yes.

Q Was Morita living in the same tent with you at Luzon Prisoner-of-War Camp No. 1 after you were questioned about the killing of Remedio Delica?

A After the questioning I was taken to the Nichols' Camp.

Q Were you taken to the camp at Nichols Field the same day on which you were questioned or on the following day?

A It was after the questioning.

Q Was it on the same day of the questioning or was it on the following day?

A I don't remember.

Q What time of day was it that you were taken to Nichols Field?

A I don't remember what time I was moved.

Q Was it in the morning or in the afternoon?

A It was in the afternoon.

Q About how late in the afternoon?

A I arrived before supper.

Q Isn't it true that on the day in which you were questioned at Luzon Prisoner-of-War Camp No. 1 you spent that same night at Luzon Prisoner-of-War Camp No. 1?

A Yes.

Q Isn't it true that Morita slept in the same tent with you that night?

A Yes, he was in the same tent.

Q Did you see Lieutenant Kawahara at the Prisoner-of-War Camp at Nichols Field?

A Yes.

Q Did you talk to him at Nichols Field?

A Yes, I spoke to him once.

Q Did this conversation take place after you were questioned about the killing of Remedio Delica?

A Yes.

Q Did you discuss with Lieutenant Kawahara the charge against you involving the killing of Remedio Delica?

A Yes, I asked the company commander why we were being questioned daily about something which I did not know about.

Q Did you see Lieutenant Kawahara frequently between the time you were released from the dispensary at Guadalupe and the time of your surrender in 1945?

A Yes, because he was company commander and I was under him.

Q Did you see Lieutenant Kimura from time to time after your release from the dispensary at Guadalupe and up to the time of your surrender in 1945?

A Yes, I received medicine from him.

Q At Guadalupe was there a hospital in addition to the dispensary?

A Yes, there was a field hospital.

Q Were you confined to the hospital?

A No.

Q Was the dispensary used as the hospital?

A Yes, that was the unit dispensary, a small hospital.

Q Is it true that within two or three days after you entered the dispensary at Guadalupe, you were able to walk with the aid of a cane?

A Yes, if I used a cane I was able to walk.

Q Who gave you your order to go to Cebu City for anti-tank training?

A The company commander gave the order.

Q Was that Lieutenant Kawahara?

A Yes, First Lieutenant Hajime Kawahara.

Q Was that order written or verbal?

A It was a verbal order.

Q Did you receive that verbal order directly from Lieutenant Kawahara?

A No, I did not receive it directly from him because I was on guard in Toledo.

Q From whom did you receive it?

A I received it from Sergeant Major Takahama.

Q Do you know where he is now?

A No, we separated in Cebu so I do not know.

Q Where was Kawahara at the time you received the order to go to Cebu City?

A He was at the company headquarters in Balambang.

Q Did you at any time give men anti-tank training at Toledo?

A No.

Q Are you sure?

A Yes, that is a fact.

Q Did you see Lieutenant Kawahara at Guadalupe?

A No, I have not seen him there.

Q Did you talk to Lieutenant Kawahara while you were at Guadalupe?

A No.

Q When did headquarters of the Kawahara company move from Balamban to Toledo?

A I do not know.

Q Do you know in what month it occurred?

A No, I do not.

Q When you came to Toledo in July 1944 did the entire Kawahara company come also?

A No, just my squad.

Q When did the rest of the company come to Toledo?

A I do not know.

Q Did the rest of the company ever come to Toledo?

A I do not know, because September I went to the tank training and Sergeant Major Takahama took my place.

Q While you were at Toledo, who was in charge?

A Second Lieutenant Tamotsu Ogata was my commander.

Q Did he live in Toledo?

A No, he was in Balamban.

Q When Ogata was not in Toledo who was in charge?

A Of the squad, I was in charge.

Q When Ogata was not in Toledo were you in charge in Toledo?

A Yes, I was in charge of just my squad.

Q When Ogata was not in Toledo was there anyone in Toledo who was your superior?

A Yes.

Q Who was that?

A Sergeant Major Takahama.

Q Do you know where he is ?

A We separated in Cebu so I do not know where he is.

Q Did anyone ever order you to execute a Filipino in Toledo?

A No.

Q Did anyone ever authorize you to kill a Filipino in Toledo?

A No, there is absolutely nothing of the kind in the Japanese Army.

Q Did anyone ever authorize you to kill a Filipino in Toledo?

A No, in the Japanese Army even with the permission of the company commander, a soldier does not have that right.

Q Have you ever killed a Filipino in Toledo?

A No.

Q Have you ever killed a Filipino in the vicinity of Toledo?

A No.

Q Have you ever killed a Filipino anywhere?

A No.

Q Have you ever killed a Filipino women anywhere?

A Absolutely not.

Q Have you ever abused any Filipino?

A No.

Q Have you ever slapped a Filipino?

A No.

Q Were your duties in Toledo, duties of a military police nature?

A By order of the company commander, we went out for security guard.

Q What did you do when you went out for security guard?

A We were ordered by the company commander to get along with the Filipino natives in a friendly fashion. We went out with those orders.

Q Did you ever have anything to do with guerrillas?

A No.

Q Have you ever had anything to do with persons suspected of being guerrillas?

A No.

Q Have you ever questioned a Filipino suspected of being a guerrilla or a spy?

A No, in the Japanese Army such authority is not given to a noncommissioned officer. That is the right of the company commander.

Q In the Japanese Army the company commander is the only one who questions suspected guerrillas; is that right?

A In the Japanese Army soldiers and noncommissioned officers do not have the right to take men into custody and question them. For that purpose there is the military police.

Q Have you ever investigated a person suspected of being a guerrilla or a spy?

A No.

Q Have you ever seen a Filipino in custody at the garrison at Toledo?

A No.

Q Were you ever present when a Filipino was executed?

A No.

Q Do you know Cristobal Lara?

A No.

Q Do you remember seeing on the witness stand yesterday the first man who testified?

A I do not know that man.

Q Did you see him while he was on the stand yesterday?

A Yes, because I was sitting over there.

Q Have you ever seen that man in Toledo?

A No I have not.

Q Were you present when the second man testified yesterday?

A Yes, I was sitting over there.

Q Have you ever seen that man in Toledo?

A No.

Q Have you ever seen him before anywhere?

A No.

Q Do you know what tuba is?

A Tuba?

Q Yes.

A I do not know what tuba is.

Q Have you ever heard of a Filipino beverage called tuba?

INTERPRETER: He pronounces it as t-o-b-a.

A Yes, I know toba.

Q Have you ever drunk any toba?

A Yes, I have.

Q Have you ever drank any in Toledo?

A Yes.

Q Where did you get it in Toledo?

A Some soldiers had purchased it. I do not know where they got it from.

Q Did you ever get it directly from a Filipino?

A No.

Q Do you know a Filipino girl named Pacita Patalinghug?

A No.

Q Did you ever know a girl named Pacita?

A No.

Q Did you ever know a Filipino named Syson?

A No.

Q Were you ever in Barrio San-Ang, near Toledo?

A I don't know such a place.

Q Have you hunted for guerrillas?

A No.

Q Have you ever gone on a patrol?

A No.

Q While you were on guard duty in Toledo what were you guarding?

A That was just a security guarding in order to get on well with the Filipinos.

COLONEL HAUSE: The Commission will take a ten-minute recess.

(At 0925 hours the Commission recessed until 0935 hours, at which time the proceedings were as follows:)

COLONEL HAUSE: The Commission will be in session.

CAPTAIN FISHMAN: Sir, all five members of the Commission, the Accused, Defense Counsel, and Prosecution are present.

CAPTAIN FISHMAN (To the Interpreter): Remind the witness that he is still under oath.

(Discussion ensued between the witness and interpreter.)

CROSS EXAMINATION (CONT.)

BY CAPT. FISHMAN:

Q Against whom were you guarding Toledo?

A Under the order of company commander we were just guarding for the purpose of security guard.

Q Were you guarding it against guerrillas?

A We did not have/definite purpose;we were sent there for the purpose of security guard.

Q What was the danger from which you were protecting Toledo?

A We were sent there by the company commander for the purpose of security guard, and to get along with the Filipinos. Aside from that, I do not know the purpose of our being sent there.

Q What are the duties of a security guard?

A It was to get along with the Filipino people and to aid the suffering.

Q Were those the only duties of a security guard, "to aid the Filipino people and to aid the suffering"?

A Yes.

Q Do you know the names of any Filipinos in Toledo?

A I do not know of any.

Q Were there any Filipinos working for the garrison in Toledo?

A When I was there they were not hired.

Q Did you treat any civilians in Toledo? Did you give any civilians in Toledo any medical treatment?

A Yes, I treated some persons with bad tooth and also with boils on their legs.

Q Were you well known among the people of Toledo?

A Yes.

Q Were you well known among the people of Toledo as Dr. Tabuo?

A Yes.

Q Do you speak a little Visayan?

A No, I know good morning and good afternoon.

Q Do you know any words in Visayan besides good morning and good afternoon?

A No.

Q What language is spoken on the Island of Cebu?

A I believe Visayan is spoken.

Q How long were you on the Island of Cebu?

A From the letter part of January 1944 till I was taken prisoner.

Q When were you taken prisoner?

A September 29th 1945.

Q Did the people of Toledo speak Japanese to you?

A No.

Q Did you speak to the people of Toledo when you saw them in the market place or when you treated them?

A No.

CAPT. FISHMAN: I have no further questions of this witness.

COL. HAUSE: Questions by the Defense?

LT. GORDON: I have a few.

REDIRECT EXAMINATION

BY LT. GORDON:

Q When you were in the dispensary did you sleep on the floor, or was there something between your body and the floor?

A There was a blanket and comforter.

Q When you left Toledo to go to Cebu to school, in what conveyance did you go?

A On a truck.

Q How long did that trip take you?

A From about 10:30 in the morning to around 4:30 in the afternoon.

Q Did the truck stop for any length of time on the trip?

A Yes, trucks of Japan heat very often so various intervals they were stopped to put in water.

LIEUTENANT GORDON: At this time I would like to say that the Prosecution and the Defense have stipulated that the approximate distance between Toledo and Cebu is forty-two kilometers by road.

COLONEL HAUSE: It will be so entered in the record.

Q After leaving the dispensary in Cebu when again did you see Lieutenant Kimura?

A When I returned to the company I saw Lieutenant Kimura and returned.

Q What do you mean, "When you returned to the company you saw Lieutenant Kimura and returned"?

A When leaving the unit dispensary, since Medical Officer Kimura is in charge, it was the formality to see him first.

Q And then after you left the dispensary and had seen Lieutenant Kimura when again did you see him, if ever?

A After we moved, when I received medicine in the mountains.

Q Did you receive medicine because of your own illness or because you needed it to supply the men in your unit?

A Because the men in our unit were suffering from malaria I received medicine and gave it to them.

Q How long a period of time were you assigned to the town of Toledo?

A From the latter part of July to September the 2nd.

Q How old are you?

A I am 29 years old.

Q How long have you been in the Japanese Imperial Army?

A Six years.

Q What were you before coming into the Army?

A Farming.

LIEUTENANT GORDON: That's all.

CAPTAIN FISHMAN: Nothing further.

COLONEL HAUSE: Any questions by members of the Commission? There appear to be no further questions. The witness will be excused.

LIEUTENANT GORDON: Lieutenant Kawahara.

HAJIME KAWAHARA

called as a witness by the Defense was sworn and testified as follows through Interpreters Nimura, Baba, and Ushijima:

DIRECT EXAMINATION

BY LIEUTENANT GORDON:

Q Do you know a Japanese soldier by the name of Chikanori Tabuo?

A Yes.

Q Do you know where he was in the month of August, 1944?

A He was in Toledo.

LIEUTENANT GORDON: I understand that the name of the witness has not gone into the record as yet. It is First Lieutenant Hajime Kawahara.

COLONEL HAUSE: Ask the witness that and get it from him.

Q What is your name?

A Hajime Kawahara.

Q What is your rank?

A First Lieutenant.

Q In August 1944 to what unit were you assigned?

A 173rd Infantry Battalion.

Q What were your duties with that battalion?

A I was company commander.

Q Were you the company commander of the unit to which Tabuo was attached?

A Yes.

Q And where were the company headquarters located in August 1944?

A In Balamban .

Q Where was Tabuo in August 1944?

A In Toledo.

Q Did you, either in the month of August or the month of September 1944, issue an order assigning Tabuo to an anti-tank gun battalion school?

A You mean anti-tank school?

Q Yes.

A I ordered him to go to training for the purpose of anti-tank.

Q Where was this school to be held?

A The school was to be in Cebu.

Q When you say, "You ordered him," did you verbally order him to go to this school or did you issue a written order?

A It was a verbal message through a messenger.

Q Do you know whether this order was carried out?

A Yes.

Q Do you know when Tabuo left Toledo to go to school in Cebu?

A I don't know.

Q Do you know about when he left?

A I gave the order in the latter part of August.

Q And how soon was the school to start?

A The order was that the school would start in the latter part of August or the first part of September.

Q Do you know whether Tabuo went to that school?

A Yes.

Q How do you know that?

A There is report from battalion headquarters that he arrived.

Q Do you know whether or not Tabuo finished his schooling at Cebu?

A I received a report saying that he completed the same.

Q Do you know what happened to Tabuo after he completed his training?

A He did not return.

Q Did you find out why he did not return?

A I heard later at that time there was bombing and no transportation, so he was passing the time at battalion headquarters.

Q When did you pick Tabuo up again? Put it this way: When did Tabuo rejoin your unit?

A The latter part of December 1944.

Q Did you question him as to where he had been, and as to what he was doing all this time after his schooling had been completed?

A Yes, I asked.

Q What did he tell you?

A I received report that while he was passing time at the battalion headquarters he became sick and entered the dispensary.

Q Was this report that you received a written report?

A Verbal.

Q Was that the usual procedure at that time, with the Japanese Army?

A To report without fail upon return.

Q What I mean is, wouldn't it be usual for you to get a written report that Tabuo was confined in a hospital or dispensary or that he was sick?

A From whom?

Q From the dispensary authorities, battalion headquarters.

A Yes, I received such reports.

Q Where did you say company headquarters was in the month of August 1944?

A In Balamban.

Q Did you during the month of August or September go to Toledo?

A I went to Toledo about the middle of September.

Q Did you transfer company headquarters to Toledo about that time?

A Yes.

Q How long did you stay in Toledo?

A Until the first part of November 1944.

Q Did you move the company headquarters out of Toledo during the first part of November 1944?

A Yes.

Q Did you leave any troops behind?

A No.

Q When you say the first part of November, can you be more exact and say whether it was in the first week or second week or something more exact?

A Just before or after the tenth.

Q While you were in Toledo had you established your company headquarters there from the middle of September to the early part of November, was Tabuc in Toledo?

A No.

Q If Tabuc was in Toledo would you know about it?

A When?

Q During this time.

A Yes, I would know.

Q During this time did you have occasion to execute any Filipinos, either for guerrilla activities or for spy work?

A Yes.

Q Were you the commanding officer of the unit in Toledo during this time?

A Yes.

Q Would it be your duty as commanding officer to try any Filipinos and then order them to be executed?

A No.

Q Do I understand you to say that you did execute certain Filipino people for spy work or guerrilla activites while you were in Toledo?

A No.

CAPT. FISHMAN: I should like to have that question and answer read, please.

WHEREUPON, the Reporter read the last question and answer.

Q Didn't you say a few questions previously that while you were in Toledo you did execute some people? Did you understand that question then? Do you understand it now?

A No, I did not execute any.

Q Then we are to understand that while you were the commanding officer of the unit and while you were in Toledo from the middle of September to the early part of November you did not execute any Filipino?

A I did not execute any.

Q Was any incident of a killing of any Filipino citizen reported to you while you were in Toledo?

A No.

Q Would it be possible in the Japanese Army for a noncommissioned

officer to hold a trial of a Filipino civilian?

A It cannot be done.

Q If a Japanese noncommissioned officer would do such a thing and you heard about it, how would he be disciplined?

A I would punish him.

Q How would you punish him?

A If it were a noncommissioned officer, it would be confinement and hard labor.

Q While Tabuo was under your command, did you ever have occasion to punish him or court-martial him?

A No.

Q While you were in Toledo were there any complaints made to you concerning mistreatments or ill-treatment or illegal killing of Filipino civilians?

A I did not hear.

Q Did you hear of the killing of a Filipino civilian by the name of Remedio Delica while you were in Toledo?

A I did not hear.

Q When was the first time that you heard about the killing of a civilian by the name of Remedio Delica?

A I have never heard of it.

Q When you left Toledo with your unit where did you go?

A To Babac in Cebu City.

Q When you came to Babac in Cebu City did you see Tabuo?

A No.

Q When did you next see Tabuo?

A Do you mean meet him or see him?

Q See him.

A Yes, I saw Tabuo.

Q Where did you see Tabuo?

A After leaving Toledo and going to Guadalupe and Cebu City, from the car I saw Tabuo in what seemed to be a dispensary.

Q When did Tabuo report back to the company?

A The latter part of December of the same year.

Q Did you speak to him then?

A Yes.

Q What did you ask him?

A I asked him about the tank training and what happened here later.

Q What did he tell you about what happened later?

A It was heavy bombing at the time and after he completed this training there was no transportation, so while he was passing time up at the town in headquarters he became ill.

Q Did he tell you anything more?

A He entered the dispensary and stated that he had no way of expressing his excuse for not being able to return to the company at such an important time.

Q Did you get an official report from the dispensary or the battalion regarding the length of time that Tabuo stayed in the dispensary?

A Yes.

Q Did that official report show how long Tabuo had been in the dispensary?

A Yes.

Q Do you recall the day that he was admitted to the dispensary and the day that he was discharged pursuant to that official report?

A I do not remember clearly but I believe it was the latter part of October when he entered the dispensary and the latter part of December when he left.

Q How many men did you have in Toledo during the month of August and September 1944 before you came there?

INTERPRETER USHIJIMA: Before "you" came there?

LIEUTENANT GORDON: Before "he" came there (pointing to the witness).

A I believe it was eight or nine men.

Q Who was in charge of those men?

A Sergeant Tabuo.

Q When you came to Toledo how many men did you bring with you?

A To Toledo there was forty or fifty.

Q Were there any other officers?

A Yes.

Q How many?

A One.

LIEUTENANT GORDON: That's all.

COLONEL HAUSE: The Commission will take a ten-minute recess.

(At 1020 hours the Commission recessed until 1030 hours, at which time the proceedings were as follows:)

COLONEL HAUSE: The Commission will be in session.

LIEUTENANT GORDON: If the Commission please, I would like to ask the witness one more question.

CAPTAIN FISHMAN: May I first state that all five members of the Commission, the Accused, Defense Counsel, and Prosecution are present in court. (To Interpreter) Will you remind the witness that he is still under oath?

(Discussion ensued between Interpreter and witness.)

LIEUTENANT GORDON: I don't believe I asked the witness to identify the Accused in this case.

BY LIEUTENANT GORDON:

Q Do you see Tabuo in this courtroom?

A Yes.

Q Will you point him out, please?

A (Pointing)

LIEUTENANT GORDON: Let the record show that the witness pointed to the Defendant.

COLONEL HAUSE: All right. Prosecution's witness.

CROSS EXAMINATION

BY LIEUTENANT CASTILLO:

Q Please state your name and age.

A Hajime Kawahara, 32 years.

Q Where did you live in Japan?

A Kagoshima Ken, Soo Gun, Town of Shibushi.

Q When did you come to the Philippines?

A I believe it was the latter part of January 1944.

Q Where in the Philippines did you land?

A Cebu City.

Q Why did you come to the Philippines?

A I can't understand the question.

LIEUTENANT CASTILLO: Will the reporter repeat the question?

(The last question was read by the reporter.)

A Under orders.

Q What was your position or occupation when you came to the Philippines?

INTERPRETER USHIJIMA: May I have the question repeated?

(The last question was read by the reporter.)

A I was the fourth company commander of the 73rd Independent Infantry Battalion.

Q Is that the company in the Japanese Imperial Army?

A Yes.

Q How many men did you have at that time?

A 170 men.

Q Were you all assigned in one place in the Philippines?

A No, we were split up.

Q What municipalities or towns were occupied by your company in the Philippines?

A The company was separated into Balamban, Asturias, Toledo and on the road between Toledo and Cebu.

Q How many men of your company were assigned to Toledo and Cebu?

A Toledo, eight or nine.

Q Who was in charge of those stationed in Toledo?

A Sergeant Tabuo.

Q Is he here, present?

A Yes.

Q Where is he?

COL. HAUBE: The witness pointed to Tabuo.

Q On what date was he assigned at Toledo?

A I believe it was July 1944.

Q Why was he assigned there at that time?

A He was a very dependable noncommissioned officer so we assigned him there.

Q What was his work there?

A Guard in Toledo against possible guerrilla or enemy activities.

Q Was that fact made known to him when he was assigned to that place?

A I explained to him well to get along with the civilians in a friendly manner and to protect the area.

Q What order did you give him in case he will find some guerrilla activities in the place?

A I ordered him to report it to the company commander.

Q Was he not advised to make investigations about guerrillas and the spies that may be living in that locality?

A That was not given to him.

Q Why was he not authorized to do so?

A Because that is the work of a company commander.

Q Is it not true that in the Japanese Army investigations of guerrillas and spies are conducted by noncommissioned officers?

A No.

Q Is that true in all Japanese units that prevail in the Philippine Islands?

A If there were such a thing that would be wrong.

Q Did you tell him by what manner he was going to find out whether there were guerrillas or spies in the locality?

A Yes.

Q How would he find out the existence of guerrillas and spies in the locality as ordered by you?

A As I explained previously, I explained to him to get along with the civilian populace in a friendly way, and that in the case such an incident would arise, the civilians would report it to him and action be taken accordingly.

Q Was he not under orders to find out by himself the existence of guerrillas or spies?

A He had no authority to investigate.

Q Do I understand that he was assigned only to wait for reports from the Filipino civilians that guerrillas existed in that locality and, if there is no report, he has no authority to investigate or find out the existence of the same?

A Yes, that is correct. If he had a large number of subordinates he might be able to conduct such investigations, but with only eight or nine men it would be impossible.

Q If that was correct, why did you assign him at Toledo and not ask the civilians to report that matter to you at Balambang, which is very near Toledo?

A The Japanese Army communication and transportation system was very poor and in our opinion the distance was great.

LIEUTENANT GORDON: What was great?

INTERPRETER USHIJIMA: The distance, in our opinion.

Q Do you mean to say also that Tabuo would only depend upon the reports of civilians to him that guerrillas existed in the place without investigating or verifying the matter before reporting it to you?

COLONEL HAUSE: Will the reporter read the question?

(The last question was read by the reporter.)

A The duty I gave Tabuo was not to investigate or find spies or guerrillas.

COLONEL HAUSE: Will the Prosecution please make the questions a bit more simple and not so involved; if needs be, ask three simple questions rather than one involved one.

Q Do I understand that Tabuo was assigned without any authority at all to find out whether there were guerrillas or spies in the locality?

A I did not give him any authority to find guerrillas or spies.

Q How long did Tabuo stay there?

A About a month and a half.

Q Did he submit reports to you during his stay there?

A Yes.

Q What report did he put to you?

A Just that there was nothing out of the ordinary and that they all were healthy.

Q In that report to you about the condition in Toledo --

COLONEL HAUSE: Will the Prosecutor face the Interpreter when he asks his questions.

Q Did not Tabuo report to you the condition of peace and order at Toledo during that time?

A He reported that there was nothing out of the ordinary and that everything was peaceful.

Q During the time that Tabuo was at Toledo, did you ever visit Tabuo?

A No.

Q Was there no officer in the Japanese Army ever to supervise the work of Tabuo at Toledo at that time?

A There was.

Q Who?

A Second Lieutenant Ogata.

Q Where is Second Lieutenant Ogata at present?

A He died.

Q When did Tabuo leave Toledo?

A I do not remember the exact date he left, but I gave the order to leave around the latter part of August.

Q What order was that?

A The order was for Tabuo to report to Cebu City to receive anti tank training.

Q Did you see him go to Cebu City?

A I didn't see him.

Q Was Tabuo able to go to Cebu City to have anti tank practice?

A I heard that he arrived there through a report from battalion headquarters.

Q Did you not see him there while he was having his anti tank practice?

A At that time I didn't go to Cebu so I do not know of it.

Q Did you know if Tabuo was able to finish his anti tank practice?

A There was a report that he completed training.

Q Was the report verbal or on paper?

A It was a wireless.

Q Who gave the report to you?

A Battalion headquarters.

Q Did the report tell you the date when Tabuo finished anti tank practice?

A I remember that it was written on the report, but I do not remember the exact date but I am sure that I received the report after the first bombing of Cebu.

Q How was the report brought to you from Cebu?

A By wireless.

Q Did you not say a while ago that the date when Tabuo was released from anti tank practice was a written report?

A I said it was a wireless.

Q Did Tabuo return to your company after he had finished his anti tank practice?

A No.

Q Do you know why?

A Yes.

Q Why?

A Due to bombing at the time battalion vehicles were destroyed and there was no transportation, and while passing time at battalion headquarters he became sick and had to enter the battalion dispensary.

Q Did you know all of these things during that time?

A Yes.

Q How did you know it then?

A There were reports from battalion headquarters.

Q Did the report tell you the date when Tabuo became sick?

A The date of his entrance to the dispensary was dated, but I do not remember the rest.

Q When did Tabuo enter the dispensary according to that report?

A I cannot think of it, but I remember it as around the latter part of October.

Q Do you know how long ago he stayed in the dispensary?

A He was there from the latter part of October to the latter part of December when he returned to my company.

Q Did you ever see Tabuo in the dispensary while he was there?

A Yes.

Q How many times?

A Once.

Q When was that?

A That was when we left Toledo en route; I saw him from the vehicle.

Q What was Tabuo doing at the dispensary at that time?

A I don't remember clearly but I saw him in the entrance of what appeared to be the dispensary, and he may have been receiving treatment.

Q Did you talk to him at that time?

A No.

Q Was not Tabuo a member of your company?

A Yes.

Q When you see him after he stayed in the hospital for a long time did you not talk to him at all?

A I saw him while we were in the vehicle en route, so I did not have time to stop and talk to him.

Q Where were you going at the time?

A To Guadalupe.

Q Did you not stop at Guadalupe if you were going to that place? If you are going to that place did you not stop there?

A We stayed at a place quite a distance from the battalion headquarters for two or three days.

Q Do you remember the day when you saw him at the dispensary?

A That was the day we left Toledo.

Q When did you leave Toledo?

A Just before or after the 10th of November.

Q How far from the dispensary did you stay at Guadalupe for three days?

A From the place where I saw Tabuo it was around one kilometer.

Q Did you not ever visit Tabuo in the hospital while you were one kilometer away from him for three days?

A Up to that time I always visited my men when they were in the hospital, but at that time I was unusually busy with plans and examining positions.

Q How far was Tabuo from you when you saw him in the dispensary?

A The vehicle was traveling down the center of the road and the building was right along the road so it was just that distance between the building and the place where the vehicle was traveling.

Q Did Tabuo see you in the vehicle?

A I don't remember but he may have noticed me and maybe he didn't.

Q You also said in the direct examination that you stayed at Toledo from September to November. What did you do there at that time?

A The orders I received were that my company was soon to move to Cebu and until that time to maintain peace and to conduct military training.

Q Where were you to conduct peace and order and military training?

A In Toledo.

Q What was the condition in Toledo at that time with respect to peace and order?

A When I went to Toledo, civilians had a sympathetic attitude, when my company moved into town there were reports that the guerrillas had given some propaganda to the civilians, and many of the Filipinos were scared and had taken refuge to the mountains.

Q How many soldiers did you ever have in Toledo at that time?

A I took forty or fifty.

Q Was there also an officer besides you with the company?

A There was.

Q Who was he?

A Second Lieutenant Ogata.

COL. HAUSE: At this time the Commission will recess until 1330.

WHEREUPON, at 1126 hours, the Commission recessed until 1330 hours, at which time the proceedings were as follows:

COLONEL HAUSE: The Commission will be in session.

CAPTAIN FISHMAN: I state for the record that all five members of the Commission, the Accused, Defense Counsel, and Prosecution are present.

(To Interpreter) Will you please remind the witness that he is still under oath?

(Conversation ensued between the Interpreter and the witness.)

INTERPRETER USHIJIMA: If the Commission please, I would like to make a correction in the interpretation of one question before the recess.

COLONEL HAUSE: Go ahead.

INTERPRETER USHIJIMA: The question was, "What was the condition in Toledo at that time with respect to peace and order?" The answer was, as previously testified, "When I went Toledo civilians had a sympathetic attitude. When my company moved into town there were reports that the guerrillas had given some propaganda to the civilians and many of the Filipinos were scared and had taken refuge to the mountains." The words, "civilians had a sympathetic attitude," should be, "the civilians were alarmed."

COLONEL HAUSE: Alarmed?

INTERPRETER USHIJIMA: Alarmed.

COLONEL HAUSE: You may proceed.

LIEUTENANT CASTILLO: May I request the Commission --

COLONEL HAUSE: Correction will be made in the record as dictated by the Interpreter.

You may proceed with your examination.

LIEUTENANT CASTILLO: May I ask the Commission to allow

me to have the last question and answer read?

(The last question and answer were read.)

CROSS EXAMINATION (Cont'd.)

BY LIEUTENANT CASTILLO:

Q Who was he?

A Second Lieutenant Ogata.

Q Was he also at Toledo during the time you were there?

A Yes.

Q Are you sure that during that time no Filipinos were ever killed or executed by your unit?

A There were no executions.

Q By any one in your company? Not a single Filipino was executed at that time?

A We did not kill any Filipino, even one Filipino.

LIEUTENANT GORDON: May I have the last question and answer read back?

(The last question and answer were read by the reporter.)

Q Do you know that you are declaring now under oath?

A Yes.

Q Do you know also that there is a punishment for you if you will tell any lies before the Commission?

A I don't know.

Q If you don't know then I will inform you that there is a punishment for you if you will tell lies before the Commission.

A Yes.

Q Do you remember having been investigated at the Prisoner-of-War Camp No. 5 Nichols Field, Rizal, Luzon, Philippines, on 8 March 1946?

LIEUTENANT GORDON: May I have that question read?

(The last question was read by the reporter.)

A Yes.

Q I hand you this document in Japanese (handed to witness). Will you state whether you know the same?

A I made a statement and had it written.

Q Will you see if that is the statement you had written?

A Yes.

Q Can you recognize this signature in here (indicating)?

A Yes.

Q Whose signature is that?

A It is my signature.

LIEUTENANT CASTILLO: Your Honor, may I ask the Commission that this be marked as Exhibit 2 for the Prosecution.

COLONEL HAUSE: Any objection?

LIEUTENANT GORDON: It can be marked as an exhibit without stating what the contents are. I can't allow it to go into evidence unless I know what the contents of it are.

LIEUTENANT CASTILLO: Just to be marked, sir, as an exhibit.

COLONEL HAUSE: If there is no objection it will be marked as an exhibit, but before it will be introduced in evidence it will be submitted to the Defense for translation.

LIEUTENANT CASTILLO: And this document which is the translation of the document can be marked as Exhibit 2-A, sir.

COLONEL HAUSE: Under the same conditions.

LIEUTENANT GORDON: Under the same conditions.

COLONEL HAUSE: So marked.

(Statement in Japanese, and English translation were marked Prosecution's Exhibits 2 and 2-A for identification respectively.)

LIEUTENANT CASTILLO: May I request, sir, that the translator read one of the questions in the translations, and then find the question in Exhibit 2, sir.

COLONEL HAUSE: Our record should show what is going on now. Will you explain what goes on?

LIEUTENANT CASTILLO: Sir, in that statement of Hajime Kawahara he admitted that there were Filipinos killed at Toledo, sir. Now, he made that statement in Japanese and I would like to be sure that the translation made in Exhibit 2-A is correct, sir.

CAPTAIN FISHMAN: The Prosecution asks the Interpreter whether he is able to translate into English that statement in Japanese signed by Kawahara in open court? Are you able?

INTERPRETER USHIJIMA: Yes.

CAPTAIN FISHMAN: Would you proceed to read that statement, translating it into English.

(Interpreter Ushijima thereupon read the requested Q-and-A testimony in Japanese.)

INTERPRETER USHIJIMA: The question was, "Were there any Filipinos killed at Toledo?" The answer is, "Yes."

LIEUTENANT GORDON: I object to the question as put in the statement because it does not limit as to time, and ask that the answer be stricken out.

LIEUTENANT CASTILLO: I beg your pardon, sir?

LIEUTENANT GORDON: I say that the question as put to the witness in this statement in the exhibit does not mention any times when there were killings in Toledo, and for that reason I ask that the question and the answer both be stricken from the record.

CAPTAIN FISHMAN: Sir, in that case we shall have to

request the interpreter to continue reading and translating from the affidavit.

COLONEL HAUSE: Will that show the date that is involved?

CAPTAIN FISHMAN: Yes, sir.

LIEUTENANT GORDON: I ask at this time that the statement be refused as evidence here on the ground that the witness is here to testify and can be cross-examined and shown that he has given testimony at some other time without the use of any statement.

CAPTAIN FISHMAN: Sir, the witness has stated in open court that no Filipino civilians were killed in Toledo. We have a right to impeach him by showing that he made an inconsistent statement at a previous time. That is exactly what we propose to do.

COLONEL HAUSE: This particular document is signed by the witness?

CAPTAIN FISHMAN: It is.

COLONEL HAUSE: Is there any reason why it should not be introduced in its entirety?

CAPTAIN FISHMAN: We have no objection to doing that.

LIEUTENANT GORDON: This statement, sir, was not taken in any court; was not taken before any Commission; was not authorized by the War Crimes Commission; and, therefore, I don't think that it should be admitted into evidence.

COLONEL HAUSE: By the rules under which this Commission works it is admissible for its probative value even though the witness is here, and the point seems to be well taken by the Prosecution. Therefore, there is no reason why the Commission won't accept it in its entirety. I will have the interpreter check to see if the document in Japanese corresponds to the translation as given in English.

CAPT. FISHMAN: Sir, that will take the translators a few minutes to do. It is a page or page and a half.

COL. HAUSE: The Commission will take a ten minute recess.

WHEREUPON, at 1345 hours the Commission recessed until 1355 hours, at which time the proceedings were as follows:

COL. HAUSE: The Commission will be in session.

CAPT. FISHMAN: Sir, all five members of the Commission, are present, together with the Accused and Defense Counsel and the Prosecution.

COL. HAUSE: You may proceed.

CAPT. FISHMAN: Will you please remind the witness that he is still under oath.

WHEREUPON, the Interpreter translated to the witness.

CAPT. FISHMAN: I should like to have the Reporter read the questions and answers brought out by Lieutenant Castillo, the part in which Lieutenant Castillo asked the witness whether any Filipinos were killed in Toledo.

WHEREUPON, Reporter Cohen read the questions and answers as follows:

"Q Are you sure that during that time no Filipinos were ever killed or executed by your unit?

A There were no executions."

CAPT. FISHMAN: I ask the Official Interpreter to state whether he has checked the Japanese in Prosecution's Exhibit No. 2, whether he has checked the English translation of that affidavit, which translation is identified as Prosecution's Exhibit No. 2 A, whether he has compared those two.

INTERPRETER: The sections pointed out as desired to be checked, the translation was checked and is acceptable.

CAPT. FISHMAN: Is it an acceptably correct translation?

INTERPRETER: Yes, sir.

CAPT. FISHMAN: Does the Commission desire the Interpreter to read, or shall I read that?

COL. HAUSE: You read it, but read it in its entirety, the whole thing.

CAPT. FISHMAN: The Interpreter has checked only that portion relating to this killing; the other portions of the affidavit are immaterial so far as the Prosecution and Defense are concerned, and for that reason the Interpreter has not checked the rest of the affidavit. Would it meet with the Commission's approval if we merely offered in evidence that portion of the affidavit?

COL. HAUSE: The Commission would rather have it in its entirety, whether it is immaterial or not, and we can judge the value of it.

CAPT. FISHMAN: May we do this, then; may we read the portion which we consider material, then offer the entire Japanese affidavit, the entire English translation, subject to any checking by Defense Counsel later on?

LT. GORDON: That is acceptable.

COL. HAUSE: All right, that is acceptable.

CAPT. FISHMAN: I read from the English translation of an affidavit made by Hajime Kawahara on 8 March 1946, I read a portion of that affidavit as follows:

"Q Were Filipinos killed at Toledo?

A Yes.

Q Why were Filipinos killed?

A Those Filipinos were members of my unit as hired troops. After landing on Cebu

Island and on our way to Balanban they were attached to my unit by battalion orders. Thereafter, they were equipped the same as all Japanese troops, received the same allowance (foods, pay, etc) and they worked under the laws of the Japanese Army. We called them the Raiding Unit. These persons were at first very loyal and were working under my command but after the first bombing of the Americans in the middle of September, their attitude changed and contacting the guerrilla troops began taking part in guerrilla activities. I learned of this and I reported once to the battalion commander and the battalion commander said to dispose of such persons at once. However I had petted them a great deal until then and I could not be able to kill them. However in the beginning of October these hired soldiers who had been issued guns, pistols and light machine guns were planning to escape with it. But 2nd Lt OGATA, Tamotsu who was on guard (security) discovered this and reported it to me so I immediately ordered their arrest. It is said that at that time they resisted with pistols. 2nd Lt OGATA, Tamotsu who captured them and came to me was very excited. I immediately asked by wire the battalion commander on their disposition. Then 2nd Lt OGATA, Tamotsu, greatly excited said to execute them immediately, But I ordered him to "wait". Order came from the battalion commander to execute them immediately. However, I just couldn't carry this out. I went as far as to argue with 2nd Lt OGATA who wanted to do it immediately but in any way I ordered him to wait. However 2nd Lt OGATA did not obey my orders and executed them. I punished 2nd Lt OGATA. I reported this to the battalion commander.

Q Do you know the names of these Filipinos?

A 'Anacito, Arao', 'Caesar, Candal,' 'Santiago, 'Torion' and three others but I do not know their names.

Q When were these seven Filipinos killed?

A Beginning of October 1944.

Q Where?

A Toledo.

Q Were all seven killed together?

A I don't know.

Q Do you know who killed these Filipinos?

A 2nd Lt DAGATA, Tomotsu.

Q Where is he now?

A He died. I was by him.

Q Were these seven Filipinos tried by court?

A No."

The Prosecution offers in evidence as Prosecution's Exhibit No. 2 an affidavit written in Japanese dated 8 March 1946 signed by Hajime Kawahara, and offers in evidence as Prosecution's Exhibit No. 2-A an English translation of that affidavit, including a certificate by Shiro Sera that the translation is correct. This offer is made subject to the rights of the Defense Counsel to check the translation of the portions of the affidavit which I have not read.

COL. HAUSE: As mentioned before, it will be acceptable under those conditions.

CROSS EXAMINATION (CONT.)

BY LT. CASTILLO:

Q When you were in Toledo, did you employ Filipinos to help you in the work in the garrison?

LT. GORDON: Just a moment, may I ask Lieutenant Castillo to face me so I can hear him. Will you read the question?

WHEREUPON, the last question was read by the Reporter.

A We did not hire at Toledo, but we had hired them previously.

Q Were there any Filipinos taken by you to work in the garrison at Toledo during the time that you were there?

A: They were working.

Q What was the nature of their work in the garrison?

A Same as the soldiers.

Q Before you left Toledo in the early part of November 1944 were there still Filipinos working in the garrison?

A At that time they were not.

LT. GORDON: If the Commission please, at this time I wish to object to this line of cross examination. I understand great latitude is allowed both in the direct examination and the cross examination, but I think this is new matter and is entirely immaterial and irrelevant to the issues involved.

CAPT. FISHMAN: Sir, I would like to say that it is apparent so far in the case that there is a direct conflict between the testimony of the Prosecution witnesses and the testimony of the Defense witnesses. It is likely that one group is lying. It is our effort to establish that it is the Defense witnesses who are lying. In order to establish that, we must cross examine them in greater detail than would be necessary under other circumstances.

LT. GORDON: Sir, I do not think this is cross examination. I believe that he is bringing out entirely new matter and as far as that new matter is concerned he is making the witness his own, and he cannot bring out new matter and cross examine him on it at the same time.

COL. HAUSE: The Commission has been rather liberal all the way through this hearing on this case. There is a conflict of testimony. Our object is to get at the truth; therefore the objection is not sustained.

LT. GORDON: Note an exception.

COL. HAUSE: Will the Reporter read the last question and answer, if it has been answered?

WHEREUPON, the Reporter read the last question and answer.

CROSS EXAMINATION (CONT.)

BY LT. CASTILLO:

Q About how long before you left Toledo did the Filipinos start working in the garrison?

A As I stated in my affidavit, about a month before.

Q Were there no Filipinos other than those seven men who were killed by your unit, working in the garrison in Toledo before you left the place?

A Other than those, we have never hired.

Q What did you use when you left Toledo in going to the place where you went?

A Trucks.

Q You did not get some Filipinos to help you load the trucks before you left Toledo?

A I do not remember.

Q When did you next see Tabuo after seeing him in the dispensary? at Guadalupe?

A You really mean meet him, or see him?

Q Meet him.

A I met him the latter part of December when he returned to the company.

COL. HAUSE: I ask the Reporter to read the question and answer.

WHEREUPON, the last question and answer were read by the Reporter.

Q Did he tell you anything when you met him that time?

A He said that he was confined to the dispensary and was sorry he could not be with me in such a valuable time.

Q What was his physical condition at that time?

A He was very thin, and his complexion was very light.

Q From that time up to the time you surrendered to the American Forces were you on Cebu both together at the same place?

INTERPRETER USHIJIMA: Will you repeat the question.

(The last question was read by the reporter.)

A Yes.

Q After you surrendered did you ever meet Tabuo in the concentration camp?

A Yes.

Q Where?

A In Tacloban.

Q When you reached Luzon did you ever meet Tabuo again in the concentration camp?

A Yes.

Q Where?

A Nichols Air Field.

Q Was it after the time that you were already investigated about the case we are now trying?

A Before that time.

Q Did you not talk to Tabuo after you have been investigated with respect to the case now on trial?

A I spoke to him.

Q Where?

A At Nichols.

Q Did you talk about this case?

A At that time he just said, "I wonder why I was being brought here or whether I was going to be tried on something I don't know anything about," and I told him not to worry; that was all.

Q Did he not ask you at that time to help him?

A No.

CAPTAIN FISHMAN: That's all.

COLONEL HAUSE: Questions by the Defense?

LIEUTENANT GORDON: A few questions, your Honor.

REDIRECT EXAMINATION

BY LIEUTENANT GORDON:

Q Do you recall what Tabuo's rank was when he was in Toledo?

A I'm sure he was a corporal.

Q Do you know when he was promoted to sergeant?

A I believe it was around May of 1945.

Q By the time Tabuo had finished his anti-tank training in Cebu you and the rest of your unit had already moved into Toledo, is that right?

A I do not know the exact date when Tabuo completed his anti-tank training, but we moved to Toledo about September 14th or 15th.

Q And at that time Tabuo was already in Cebu taking training, is that right?

A He was not there when we went to Toledo.

Q A few minutes ago when this officer asked you whether any Filipinos had been killed in Toledo, did it occur to you that he meant and intended to include soldiers, Filipino

soldiers attached to your unit?

A When he said "Filipinos," I thought he meant Filipino civilians.

LIEUTENANT GORDON: That's all.

COLONEL HAUSE: Any further questions by the Prosecution?

CAPTAIN FISHMAN: I would like to ask the interpreter, sir, whether in putting the question to the witness about the killing of these Filipinos he used a word in Japanese that meant civilians.

INTERPRETER USHIJIMA: I just used the word "hitojin" which means Filipino.

CAPTAIN FISHMAN: That's all.

COLONEL HAUSE: Any questions by members of the Commission?

There appear to be no further questions. The witness will be excused.

KANJI KIMURA

called as witness by the Defense was sworn and testified as follows through Interpreters Nimura, Baba and Ushijima:

DIRECT EXAMINATION

BY LIEUTENANT GORDON:

Q What is your name?

A Kanji Kimura.

Q What was your rank and unit when you were in the Japanese Army?

A First Lieutenant, Medical Corps of the Onishi Unit.

Q When did you join the Japanese Army?

A On the 1st of March 1944.

Q Before you joined the Japanese Army what did you do in Japan?

A I was a doctor.

Q How long had you been a doctor?

A About seven years.

Q Where did you practice medicine?

A In the Medical Department of Tohoku University, Sendai.

Q When did you come to the Philippines and where did you land?

A Second of October 1944 I landed at Cebu.

Q How long were you on the island of Cebu?

A I was there from then on to the time of the surrender.

Q When did you surrender?

A Thirty-first of August 1945.

Q Where in Cebu were you stationed in the month of October 1944?

COLONEL HAUSE: The Commission would like to know whether or not the witness can identify the Accused.

LIEUTENANT GORDON: I am going to come to that after this.

COLONEL HAUSE: All right.

A At first I was billeted in the Line of Communications.

Q Were you ever stationed in a dispensary in Guadalupe?

A Yes.

Q When were you stationed there?

A We moved from Mandaue away on the 1st of November and after taking care of things at Mandaue I went there four or five days later.

INTERPRETER USHIJIMA: I would like to make a correction there. "I went to Guadalupe on the 1st of November and the dispensary had been there four or five days before."

Q Do you know a Japanese soldier by the name of Chikanori Tabuo?

A Yes.

Q Do you see him in court this afternoon?

A He is there (indicating).

LIEUTENANT GORDON: Let the record show that the witness pointed to Tabuo at the Counsel table.

Q Do you know whether Tabuo was a patient at the dispensary in Guadalupe in 1944?

A Yes, I know.

Q Do you know when Tabuo was admitted to that dispensary?

A I examined him on the day that I moved over to the dispensary, that is, on the 1st of November.

Q Do you know from what illness he was suffering?

A Catarrhal yellow jaundice.

Q Did you treat Tabuo in 1944?

A I examined him and gave him medicine.

Q What treatment did you give to Tabuo on that day, if you remember?

COLONEL HAUSE: The Commission will take a ten-minute recess.

WHEREUPON, at 1440 hours the Commission recessed until 1450 hours, at which time the Proceedings were as follows:

COL. HAUSE: The Commission will be in session.

CAPT. FISHMAN: Sir, all five members of the Commission, the Accused, Defense Counsel and Prosecution are present. I ask the Interpreters to remind the witness he is still under oath.

WHEREUPON, the Interpreter translated to the witness.

COL. HAUSE: I should like to have the last question and answer read back.

WHEREUPON, the Reporter read the last question and answer.

A On that day I gave him sulfate for laxative, and gave him injections of glucose and insulin, and warned him of his diet.

Q Was he a litter case or an ambulatory case?

A When he would go to the latrine, if he used a cane he was able to make it.

Q Was he confined to his bed when you saw him for the first time?

A Yes, he was.

Q How long was he confined to his bed, do you know?

A He was unable to move for approximately fifteen days.

Q How often during those fifteen days did you examine him and give him medicine?

A Every day.

Q Would you say as a medical doctor that Tabuo was in good physical condition, able to make the journey by truck or other conveyance for a distance of fifty miles and return? Was his physical condition such in the first fifteen days that he could do that?

A He could not.

Q If a patient in that dispensary left the dispensary without notice to anybody, would it be found out -- if he left during the day would it

be found out?

A Yes.

Q How often, if at all, was a roll call or a check up made of the patients, persons in the dispensary?

A Yes, there were roll calls twice a day, morning and evening.

Q Do you remember whether Tabuo was absent from any of those roll calls during the first fifteen days of his confinement in the hospital?

A I don't think he was absent from any of them.

Q After the first fifteen days of Tabuo's confinement, was he able to get up and walk about?

A I believe he was able to walk after the fifteen days.

Q Do you recall when Tabuo was finally discharged from the dispensary?

A I am not sure, but I think it was the latter part of December.

Q Do you know where Tabuo went after he left the dispensary?

A I don't remember whether he went back to his unit or he went to the mountains.

Q Do you know from what unit Tabuo was committed to the hospital?

A At that time I didn't know, but later on I learned he was from the Fourth Company.

Q Do you know where Tabuo was stationed when he was admitted to the hospital?

A No.

Q Do you recall whether you treated Tabuo for an infection in his crotch?

A I believe I did.

Q After Tabuo left the hospital did you see him again?

A I saw him in the mountains.

Q After your surrendered to the Americans and were confined in a prison camp, did you see Tabuo?

A In Leyte when the officers'' camp and the other camp were side by side I just saw him.

Q Did he talk to you about killing a Filipino civilian in Toledo in 1944?

A No.

Q Before the investigation for this case started did any Japanese soldiers in prison camps talk to you about Tabuo killing a Filipino civilian in Toledo in 1944?

A I have not heard of any.

Q Have you talked with any Japanese soldiers at all about this incident?

A No.

Q Do you know a Sergeant Hisashi Morita?

A Yes.

Q Who is he?

A Sergeant Major of the Medical Corps.

Q Was he working with you in Guadalupe in this dispensary in 1944 when you were there?

A Yes, he was there.

Q Was he there at the same time that Tabuo was confined there as a patient?

A Yes.

Q This dispensary in Guadalupe, how many buildings made it up?

A There was one nipa house used by the patients and one galvanized iron house used for examination of the patients.

Q How many patients could be accommodated in the house used for that purpose?

A More or less twenty.

LT. GORDON: That's all.

CROSS EXAMINATION

BY LT. CASTILLO:

Q When did you say you assumed your duties as a physician in the dispensary at Guadalupe?

A That was the day I moved, that is the first of November.

Q Were there already patients in the dispensary when you assumed your duties in the dispensary at Guadalupe?

A The patients which were at Mandaue were sent there already.

Q Besides the patients that were sent from Mandaue, did you have other patients in the dispensary at Guadalupe at the time you assumed your duties?

A Because we were treating the battalion patients also, there were at least seventy or eighty patients we treated every day.

Q Do you remember if/Tabuo was already in the dispensary at Guadalupe when you assumed your duties there on 1 November 1944?

A Yes, I remember.

Q About how many days was he there already when you assumed your duties there?

A I don't know.

Q Did not Tabuo enter the dispensary on the day you assumed your duties there?

A On that day I admitted him. I don't know whether he was there or not before, but I handled the admittance of Tabuo.

Q What do you mean by saying you didn't know whether he was there already before or not?

A By that I mean that the dispensary had moved from Mandaue to Guadalupe four or five days before I got there so I don't know what went on before I got there, that is, before the 1st of November.

Q Did you not say a while ago that you were the one who had admitted Tabuo into the dispensary?

A I have the authority to admit him because I am a medical doctor; the others do not have that authority.

Q So then you mean to say that Tabuo was admitted for the first time in that dispensary on November 1st, 1944?

A Yes, that is the day I moved, that is the 1st of November.

Q The question asked was: Was that also the day when Tabuo was admitted for the first time in that dispensary?

A That is the day I admitted him.

Q Was he accompanied by anybody when you admitted him into that dispensary?

A You mean to the dispensary was he admitted alone or with someone? I don't remember.

Q Did Tabuo enter alone or did somebody bring him there on that day?

A I see him first by examination when he was there so I don't know whether he was accompanied or came alone.

Q Did you stay or were you ever concentrated in the Prisoner-of-War Camp No. 1 -- at the Luzon Prisoner-of-War Camp No. 1?

A Do you mean the No. 1 Camp in Manila?

Q In Luzon. In Calamba.

A Yes.

Q Do you remember having been investigated in that camp on 27 March 1946?

A I don't remember that date but I know that I was questioned

Q When you were questioned there did you not say that Tabuo was brought into the dispensary at Guadalupe on 1 November 1944 by a soldier from his company?

A I don't remember seeing him.

LIEUTENANT CASTILLO: With the permission of the Commission sir, may I ask the witness to see the statement he made?

COLONEL HAUSE: Yes, there are no objections.

Q I show you this document. Will you see if you can recognize it (handed to witness)?

A Yes, I have seen this before.

Q Showing to you also this signature here, will you tell the Commission if it is your signature (indicating)?

A Yes.

Q Were you the one who signed it?

A Yes.

LIEUTENANT CASTILLO: I ask the Commission, sir, that this document be marked as Exhibit 3 and that its translation be marked as Exhibit 3-A.

COLONEL HAUSE: All right. Do you intend to introduce it as evidence or do you want to mark it for identification purposes?

LIEUTENANT CASTILLO: For the time being, sir, it is just marked.

COLONEL HAUSE: All right. It will be marked for identification purposes.

(Statement in Japanese, and English translation were marked Prosecution's Exhibit 3 and 3-A for identification respectively.)

Q When you were investigated during that day the questions were written by a Japanese interpreter and you yourself wrote the answer in ink, is that not true?

A There are parts where the interpreter wrote the answer and there are parts where I filled in.

Q But before you signed it you read everything that is written in it and said that everything was true, is that right? You certified that everything was true, is that right?

A I did not read the whole thing over. I was told that if this was true, to sign it, and also to put my initials where there were corrections.

Q In one of the questions you were asked, "Who brought Tabuo to the dispensary?" and you answered, "A soldier from his company." Will you say if the answer in that particular question was written by an interpreter or by you?

A I wrote this answer (indicating).

COLONEL HAUSE: Let the record show that the interpreter pointed out the question written in Japanese and the answer written in Japanese, to which the Prosecution referred.

CAPTAIN FISHMAN: That is right, sir. It might help a little if the interpreter would show the question and the answer to the witness and then if the interpreter would translate the question and answer to the Commission. Then we would be certain that it is the same question and answer.

COLONEL HAUSE: What are you referring to?

CAPTAIN FISHMAN: The question and answer, this question: "Who brought Tabuo to the dispensary?" The answer, "A soldier from his company."

COLONEL HAUSE: Referring to what paper?

CAPTAIN FISHMAN: Referring to the question and answer

as it appears in Japanese on the document identified as Prosecution's Exhibit 3.

(To Interpreter) Will you show Prosecution's Exhibit 3 to the witness?

(Interpreter does so.)

CAPTAIN FISHMAN: Will the interpreter translate to the Commission the question and the answer on Prosecution's Exhibit 3 which the witness pointed out as having been written by the witness.

INTERPRETER USHIJIMA: The question is, "Who brought Tabuo to the dispensary?" The answer, "A soldier from his company."

THE WITNESS: Since I had just come from Japan I was not familiar with the members of the battalion or company and I just assumed that it was one of the men of his own company when I wrote that answer.

CAPTAIN FISHMAN: The Prosecution offers in evidence as Exhibit 3 an affidavit in Japanese dated 27 March 1946 and a translation thereof in English as Prosecution's Exhibit 3-A. The Prosecution is interested only in the portion containing the question and answer read and translated by the interpreter, and offers both documents in evidence subject to the right of the Defense to check the translation of any other portions of Exhibit 3.

LIEUTENANT GORDON: I don't know why the thing is being marked in evidence; because it was read from, both in Japanese and in English, and I think the question and answer is now in evidence and the record shows that it came from that statement.

CAPTAIN FISHMAN: That is agreeable with the Prosecution, then, to withdraw the offer of Prosecution's Exhibit 3 and 3-A.

COLONEL HAUSE: All right. The offer will be withdrawn.

THE WITNESS: Since I had just come here I barely knew the name of the battalion commander and I would have no reason to know the names of soldiers; and it was my mistake in writing that.

Q Was Sergeant Morita also in the dispensary when you assumed your office there?

A Yes.

Q How long did Morita stay in that dispensary from the time you assumed your duties there?

A Morita went to the mountains before I did; I don't remember the date when he left.

Q Was he still there during the month of October 1944?

A Do you mean in Cebu?

Q In the dispensary.

A I think he was there in the latter part of October.

Q About what time and about what day in October did Morita leave the dispensary? I will withdraw that question. About what time in October did Morita leave the dispensary at Guadalupe?

A To where?

Q To any place.

A He did not leave. He came in October.

Q Until when did he stay there in the dispensary at Guadalupe?

A I went to the mountains in the early part of January. He went before me. I don't know exactly when.

Q Did you see him in the dispensary until the end of the month of October 1944?

A I saw him up until the day we moved to Mandaue and I didn't see him again until the first of November when I went to Guadalupe.

Q Was Morita in the dispensary at Guadalupe during the months of November and December 1944?

A He was in Guadalupe in November. About the latter part of December he might have gone to the mountains.

Q When did Tabuc leave the dispensary at Guadalupe?

A I am not sure of the exact date but I believe it was the latter part of December.

Q Where did he go?

A I do not know whether he returned to his company or went to the mountains.

Q Where did you first meet him again after he left the dispensary at Guadalupe?

A I met him in the mountains.

Q Did you stay together in the mountains before the time you surrendered to the American forces?

A In the mountains I was attached to headquarters while his company was four or five kilometers away, so I didn't know whether he was there all the time, but there was one time when he came to get medicine.

Q Where did you see him again after he asked medicine from you in the mountains?

A In Leyte.

Q Were you together in Leyte?

A No, our camps were next to each other.

Q Did you talk with each other while you were in Leyte?

A No.

Q When again did you see Tabuo after you left Leyte?

A Camp No. 5 near Nichols Air Field.

Q Did you not see him at Camp No. 1 in Laguna ?

A No.

Q When did you see him at Camp No. 5 in Camp Nichols Air Field?

A I do not remember what day, I have no idea of dates out there.

Q Did you talk to him in that camp?

A Yes, we had ordinary conversation.

Q Did you talk about this case which is being tried at present, in the camp?

A No.

Q How often did you see Tabuo in Camp No. 5 before you were brought to testify in this case?

A For about two days we were in the same camp.

Q During that time for two days you never talked anything about this case that is being tried here at present?

A No.

Q When you arrived in the stockade --

A Because I am a medical officer there is no reason why he should ask me about those things. Because I am a medical officer there is no reason why I should ask him about those things.

Q When did you arrive in the stockade at this place?

A I think it was two days ago.

Q Did you see Tabuc in the stockade from the time you arrived here until the time you reported to testify in this case?

A No, I have not spoken to him.

Q Going back to the time when you were medical officer in the dispensary of Guadalupe, do you know if there were other patients confined in the dispensary besides Tabuc at the time that Tabuc was there?

A Patients with rare illnesses, cases like that I remember, and I believe there was a leading private by the name of Tatara. Of the others I do not remember.

Q Why do you remember Leading Private Tatara, but you cannot remember the other patients there at that time?

A Because he was a soldier attached to headquarters and also his name was peculiar.

Q Will you give the Commission the exact date when Tatara was admitted into the dispensary at Guadalupe?

A I do not remember.

Q Will you give the Commission the date when Tatara left the dispensary at Guadalupe?

A I do not remember.

Q Why could you not remember the dates when Tatara was admitted into the dispensary and when he was discharged from the dispensary, when you can very well remember the date when Tabuc was admitted

there and the time when he left the dispensary?

A I remember Tatara because he had dyspepsia. That is a light sickness; whereas Tabuo's admittance date is well remembered by me because that was the day I moved to the dispensary, and also that was a busy day due to the aerial bombardment, also yellow jaundice was rare in Japan and this was new to me because it was my first case, and it was very interesting.

Q If the date was memorable to you, will you tell the Commission of any other event that occurred on that day besides the fact that Tabuo was admitted into the dispensary.

A I do not remember any other.

Q Was there anybody else who entered the hospital on that date besides Tabuo?

A I examined many patients, but there were no others which I admitted.

Q Will you give the Commission the names of the patients which you examined on that date?

A The battalion has a strength of about one thousand, and I examined about one hundred ofthose, so I could hardly remember any of the names, and again it was just about half a month or so since I had come from Japan, and I could not remember the names.

COL. HAUSE: The Commission will take a ten minute recess.

WHEREUPON, at 1558 hours the Commission recessed until 1608 hours, at which time the proceedings were as follows:

COLONEL HAUSE: The Commission will be in session.

CAPTAIN FISHMAN: I state for the record that all five members of the Commission, the Accused, Defense Counsel, and Prosecution are present.

(To the Interpreter) Will the interpreter remind the witness that he is still under oath?

(Interpreter does so.)

CROSS EXAMINATION (Cont'd)

BY LIEUTENANT CASTILLO:

Q You cannot remember even only one name besides Tabuo -- Tatara?

A No, I don't know.

Q Did you mean to say that of all the patients who stayed in the hospital you only remember the date when Tabuo entered the dispensary because that date was memorable?

A That is right.

Q If November 1, 1944, is really memorable to you, will you tell the Commission on what day of the week was that date?

A I don't know.

LIEUTENANT CASTILLO: That's all.

COLONEL HAUSE: Questions by the Defense?

REDIRECT EXAMINATION

BY LIEUTENANT GORDON:

Q When you say that you admitted Tabuo to the dispensary, do you mean that you signed the official paper of admission on that day?

A On the examination record I just stamped that he had been admitted.

Q Might he have been admitted to the dispensary a day or so before and not examined by any doctor?

A Yes, there could be such cases, especially moving.

Q Do you recall how many other soldiers were admitted to the hospital on that day?

A On that day?

Q On that day, 1 November 1944.

A I believe it was one.

Q What one other besides Tabuo?

A No, just Tabuo.

Q When you first came to Cebu you were at a dispensary or medical center in Mandaue for a few days, is that so?

A I went to Mandaue upon orders from the division.

Q When you came to Mandaue was Morita there?

A Yes.

Q And this was in the latter part of October 1944, is that so?

A The day that I was assigned there might have been somewhere around October the 20th.

Q And did Morita leave the dispensary at Mandaue and come to Guadalupe a few days before you did?

A Five or six days before.

Q In your opinion do you think that Tabuo was sick for a long period of time?

A Do you mean before?

Q While he was in this dispensary.

A Before the examination?

Q No, I mean the period of Tabuo's sickness at this time lasted for a long period of time.

A Yes, comparatively long.

Q Do you think that this might be a reason why you know he was admitted and other pertinent facts about Tabuo?

A Yes, that could be the reason why I remember his name.

LIEUTENANT GORDON: That's all.

COLONEL HAUSE: Any further questions?

LIEUTENANT CASTILLO: Two or three questions, sir.

RECROSS EXAMINATION

BY LIEUTENANT CASTILLO:

Q You say that you mean to say that you entered Tabuo into the dispensary on that day because it was the day when you signed the official papers admitting him into the hospital, is that right?

A The examination record I just stamped my signature.

Q And you say also that he was the only one you admitted on that day?

A Yes, I believe he was the only one.

Q If there were before you arrived patients already whom you examined on that day, why is it that only the paper of Tabuo did you sign as admitted in that hospital on that day, and left the others?

INTERPRETER USHIJIMA: Will the reporter read the question?

(The last question was read by the reporter.)

Q And not admit the others?

A These were patients which had been admitted in Mandaue and we just transferred them to Guadalupe.

Q Did you not say that there were also patients from the battalion headquarters that were there already when you arrived at Guadalupe on that day?

A Do you mean battalion headquarters?

Q Yes.

A The battalion headquarters' patients were also at Mandaue before,

LIEUTENANT GORDON: What was that answer?

(The last question and answer were read by the reporter.)

Q Was not Tabuo also at Mandaue before?

A No.

Q Was he the only patient in that hospital when you arrived who did not come from Mandaue?

A He is a patient which came from the company; that is, I first saw him in Guadalupe when I came to Guadalupe.

Q Was Tabuo the only patient admitted into the dispensary at Guadalupe who came from the different companies of that unit?

A I believe so but at that time I did not know what unit he was from.

Q When you examined him on that day did you not ask him if he was already there before you arrived?

A No, I did not ask him. No, sir, I didn't have the time because I have to look after 70 to 80 patients per day alone.

Q Did all of those 80 patients that you had in the hospital come from Mandaue?

A No, these were not all patients at the infirmary. These were patients who were attached to the headquarters and who came for examination.

COLONEL HAUSE: We are getting into a lot of immaterial evidence and a lot of repetition. We are not learning anything from it, and please confine your questioning to relevant matters and particularly those that have to do with the Charge and Specification under which this Accused is being held.

LIEUTENANT CASTILLO: That's all, sir.

COLONEL HAUSE: Any further questions?

LIEUTENANT GORDON: No further questions.

COLONEL HAUSE: Any questions by members of the Commission? There appear to be none. The witness will be excused.

The Commission will adjourn until 0830 tomorrow morning.

(The Commission adjourned at 1630 hours, 3 April 1946.)

Tabuco
April 3, 1946
Prosecution's Exhibit No. 2

Prosecution Exhibit No. 2
U.S.A. vs Chikanori Tabuco
3 April 1946

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答　部隊をおいて居たか。

はい、私の部隊は（DUMANGTUG）に居ました。

問　貴方の部隊は（DUMANGTUG）からドマンホグに居たか。

答　其の部隊の者がドマンホグに居なかったかは貴事です。

問　ババクはいつ頃から（BALSAN）迄行ったか。

答　ババクは（BALSAN）迄行ったのは昭和十九年十一月十日頃です。

問　其の時出たか。

答　昭和十九年十一月十日頃です。

問　トリドに居た貴方の部隊は其の後に昭和十九年十一月十日頃まで居たか。

答　それから貴方の部隊は何処に行きましたか。

問　ババク（BABAG）に貴方は昭和十九年十一月十日以後トリドに歸つた事がありますか。

川原一

答　否。
問　トリドの附近にゲリラが居ましたか。
答　はい。
問　トリドでゲリラを殺す必要がありましたか。
答　否。
問　トリドでゲリラが殺されたか。
答　否。ゲリラでどうしたか。
問　私達女子供ちましたから。私達を射殺へしました。一人も女子はトリドで北島人が殺されたか。
答　なせ北島人が殺されたか。
問　此の北島人は傭兵として私隊の部隊の一員でありました。此等の者は私達が「セブ」島に上陸して大隊命令により私の隊に配属されました。それ以後日本軍と全く同様の装備と給與（食物、俸給等）を與へ、日本軍の軍律の下に行動しておりました。
答　私達は之を越進隊と呼んでおりました。

川原一

立等の者は最初非常に忠実に私の命令の下に働いて居りましたところが、九月中旬に米軍の第二回爆撃後ゲリラ軍と連絡して、通匪行為をする様になりました。私はその事を知つて一度大隊長に報告したところ、大隊長はそんな者は早く処置しろと申されました。然し私はそれまでは可愛かつてゐましたので殺すに忍びなかつた。ところが、十月の上旬に此等の傭兵が、かねて準備であつた小銃、拳銃、軽機関銃を持つて逃走を企てたところを、かねてから警戒して居た緒方隊少尉が発見し私に報告しましたので、私は直ちに捕捉することを命じました。その時に、拳銃で捕捉してから、私の処に連れて来た緒方隊少尉は非常に興奮しておりました。私は直ちに大隊長に電報でその事を通報しました。そして緒方隊少尉は大隊長の処置を聞きました。大隊長は「待て」と命令しました。私は直ちに処刑する積りで、命令が来ました。

然し私はどうしても それを実行することが、出来ませんでした。
結オ少尉は 直ぐに やううと、私は口論をした位
かしたが、私は、とにかく、待てと命令しました。
然し、結オ少尉は 私の命令を聞かずに、「殺刑」
しました。私は、結オ少尉を、「殺刑」しました。
私はその事を大隊長に報告しました。

問 貴方はこの比島人の名前を知って
居ますか。

答 「アナンイト、ヤラオ」「シャルル、カンタール」「サンチヤゴ」
「トリオン」今カメ三名は知りません。

問 この七名の比島人は何時殺されたか。

答 昭和十九年十月上旬 居ました 他の三名
何處かで?

問 トリドドです。

答 七名全部一諸に殺されたか、

問 貴方は誰かこの比島人を殺したか知って居ますか。

答 結オ少尉から タモツ少尉 彼は今何處に居ますか、

問 彼は死にました 私は彼の側に居ました。

答 この七名の比島人はさいぱん人 され

川原一

川原一

答　たか。

問　殺せと言の命令を下した大隊長の名前は何人かすか。

答　陣軍中佐大西セイチ

問　この七名の比島人を實際に殺した人の名前を知って居ますか。

答　オカタタモツ少尉

問　もシリオ（Ramon Murio）デリクは この七名の一人でしたか。

答　ソれは知りません。

問　ワンダン（Juan Zulang）はこの七名の一人でしたか。

答　ソれも知りません。

問　大西機は何處に居ますか。

答　二三日前までルパオ收容所に居ました。

問　大西は七名の比島人を殺せと、貴方に命じたか。

答　はい。

問　大西は比島人を殺す前、彼等をさんばんせると貴方に命じたか。

答　否。

問　貴方が命令を受けた時、貴方は彼に何も言ったか。

答　其の時は何も言いません。

問　後程助けて、世界の横に言うと思って居た。

答　この七名以外に人がありますか。

問　トリンドで殺された比島

答　否、ありません。

問　貴方に写真、證據品"A"を見せます。

答　はい。私の中隊のタプオチクノリです。

問　彼は分隊長でしたか。

答　彼は何時トリンドに来ましたか。

問　昭和十九年七月頃です。

答　彼はトリンドで何時、出ましたか。

問　はっきり知りません。

答　多分八月頃と思います。

問　彼は何處へ行ったか。

答　北隊本部です。

問　あった大隊本部に命じて行きましたか。

答　彼は何故コナが近くの村に

問　対戦車教育を受けて行きました。

答　はい。

川原一

川原一

問　タブオが トリドを 八月頃 出たのを
貴方はどうして 知って居るか、

答　私が命令しました。

問　彼がトリドを出て後、何處で彼を
又見ましたか、

答　ピゼ市で十一月の中旬彼を見ました。

問　貴方が彼を見た時彼は何をして
居たか、

答　醫務室に居ました。

問　彼は醫務室で何をして居たか、

答　ちりようを受けて居た。

問　何んなちりようを受けて居たか、

答　できものの ちりようを受けて居た
と思います。

問　彼はオウダン（gelbes fieber）にかかって
居たか、

答　はい。

問　貴方は今彼はどうして 知って居るか、

答　彼がそう言った。

問　其の時の彼の狀態を述べよ。

答　彼は出來物が出來て 苦しんで居た。

問　ここから タブオは何處へ行きまし
たか、

川原一

答　ババリの中隊に歸って来ました
問　タブオはグアダルピに居た事がありますか
答　はい。
問　彼はそこで何をして居たか
答　彼はちりようを受けて居た
問　何時タブオはババリの中隊に歸りましたか
答　昭和二十年の二月頃と思います。
問　昭和十九年、タブオが又トリドに歸った事がありますか
答　貴方はそれをどうして知って居るか
問　貴方はタブオがトリドを出た後、歸へるのを見た事がありますか
答　見た事がありません。
問　貴方はタブオがトリドに居て、彼がトリドに居るのを知って居なかったのか
答　多人な事はありません。
問　昭和十九年十一月二日貴方は何處に居たか
答　トリドに居ました。
問　昭和十九年十月二日、市の建物の近く

川原一

の木に比島人がしばり附けられて銃剣で[illegible]。二人の日本兵に殺された。誰がしたか、

知りません。

問　貴方はこの事件の事を聞きましたか。

答　聞きません。

問　貴方は其の當時トリドに居た部隊を支配して居たか。

答　はい。

問　貴方が知らないで処刑が實行されましたか。

答　そう言う事は知りません。

問　貴方以外に、命令を下す權力を持つた者が居ましたか。

答　大隊長です。

問　若しも大隊長が命令を下したならば貴方は知つて居るはずだ。

答　知りません。

問　処刑は貴方の知らない中に實行されたか。

答　そう言う事はありません。私の知らない中に命令は實行されません。

川原一

問　昭和十九年十一月二日に比島人を殺した一人でしたか。

答　左様なことはありません。

問　何故ですか。

答　彼はトリントに居なかった。

問　其の當時トリントで貴方の中隊に何名居ましたか。

答　四十名位。

問　四十名の中貴方が主に居たのを知りませんか。

答　知りません。市の建物があったかなかったか知りません。

問　貴方が兵隊を或る任務に町より外に出した場合、其の兵隊が歸つた場合出發する報告するのが任務でしたか。

答　はい。

問　昭和十九年十一月二日貴方と一緒にトリントに居た者で、生き殘つて居る者が居ますか。

答　はい。
森山美保　Sgt. (Miori Moriyama)
池上安巳　Cpl. (Ikegami Yasumi)
の他の者は勝手に解放されたと思います。

問答　問　貴方は二つの説明を自分で自発的に言ったか。
答　はい。
問　貴方は大体に於て二人の説明を認めるか。
答　はい。
問　貴方は何故二名の比島人を救ったか。
答　上官であったから。

昭和二十一年三月八日。

川原一　署名

Witness to Signature of Hajime Kawahara
J. Macanon Morita 30109287

Hajime Kawahara.
Subscribed & sworn to before me this 8th day of March 1946 at POW Camp #5, Nichols Field, Luzon, P.I.
Abraham Fishman
Capt. JAGD

A Certified True Copy
Austin F. Walter 2nd Lt. M.A.
Translation Section
War Crimes Investigation Detachment

A Certified True Copy

Austin F. Walter 2nd Lt. M.A.
Translation Section
War Crimes Investigation Detachment

Tabuo
April 3, 1946
Prosecution Exhibit No. 2-A.

KAWAHARA, Hajime, after being duly sworn on oath, testified at POW Camp #5, Nichols Airfield, Rizal, Luzon, P. I., on 8 March 1946, as follows:

Q What is your name?
A KAWAHARA, Hajime

Q What is your rank?
A 1st Lt.

Q How old are you?
A 32 years old.

Q How much education have you had?
A 14 years.

Q How many years did you study English?
A 8 years.

Q Were you the commander of the KAWAHARA Company of the ONISHI Unit?
A Yes.

Q When did you come to the Philippines?
A Beginning of February, 1944.

Q Where did you go first?
A CEBU, BALANBAN

Q When did you leave Balanban?
A In the middle of September, 1944.

Q Before September did you have a unit in Toledo?
A Yes, a portion of my unit was in Toledo.

Q Was your unit ever at Dumanjug?
A No.

Q Is it a fact that none of your unit members were at Dumanjug?
A Yes, it is a fact.

Q What is Babaku?
A Babaku is a mountain near Bakaan, near Cebu City.

Q When did you leave Toledo?
A Early part of November 1944.

Q About what day in November?
A On or about the tenth.

Q Your unit which was at Toledo stayed there until about the tenth of November 1944?
A Yes.

Prosecution Exhibit No. 2-A
U.S.A. vs Chikanori Tabuo
3 April 1946

Q Where did you go from there?
A Babag.

Q Did you ever go back to Toledo after the tenth of November 1944?
A No.

Q Were there any guerillas in the vicinity of Toledo?
A Yes.

Q Was there any necessity of killing guerillas at Toledo?
A No.

Q Were guerillas killed at Toledo?
A No.

Q What did you do to the guerillas?
A They shot at us so we shot back. Not one was captured.

Q Were Filipinos killed at Toledo?
A Yes.

Q Why were Filipinos killed?
A These Filipinos were members of my unit as hired troops. After landing on Cebu Island and on our way to Balamban they were attached to my unit by battalion orders. Thereafter, they were equipped the same as all Japanese troops, received the same allowance (foods, pay, etc) and they worked under the laws of the Japanese Army. We called them the Raiding Unit. These persons were at first very loyal and were working under my command but after the first bombing of the Americans in the middle of September, their attitude changed and contacting the guerilla troops began taking part in guerilla activities. I learned of this and I reported once to the battalion commander and the battalion commander said to dispose of such persons at once. However I had petted them a great deal until then and I could not be able to kill them. However in the beginning of October these hired soldiers who had been issued guns, pistols and light machine guns were planning to escape with it. But 2nd Lt OGATA, Tamotsu who was on guard (security) discovered this and reported it to me so I immediately ordered their arrest. It is said that at that time they resisted with pistols. 2nd Lt OGATA, Tamotsu who captured them and came to me was very excited. I immediately asked by wire the battalion commander on their disposition. Then 2nd Lt OGATA, Tamotsu, greatly excited said to execute them immediately. But I ordered him to "wait". Order came from the battalion commander to execute them immediately. However, I just couldn't carry this out. I went as far as to argue with 2nd Lt OGATA who wanted to do it immediately but in any way I ordered him to wait. However 2nd Lt OGATA did not obey my orders and executed them. I punished 2nd Lt OGATA. I reported this to the battalion commander.

Q Do you know the names of these Filipinos?
A "Anacito, Arao", "Caesar, Candal," "Santiago, "Torion" and three others but I do not know their names.

Q When were these seven Filipinos killed?

A Beginning of October 1944.

Q Where?
A Toledo.

Q Were all seven killed together?
A I don't know.

Q Do you know who killed these Filipinos?
A 2nd Lt OAGATA, Tamotsu.

Q Where is he now?
A He died. I was by him.

Q Were these seven Filipinos tried by court?
A No.

Q What is the name of the battalion commander who ordered them killed?
A Lt. Colonel ONISHI, Seiichi.

Q Do you know the names of the men that actually killed the seven Filipinos?
A 2nd Lt OGATA, Tamotsu.

Q Was Remdio, Delica one of these seven?
A That I don't know.

Q Was Juan Gutang one of these seven?
A That I don't know.

Q Where is Mr. Onishi?
A Until two or three days ago he was at LuPOW.

Q Did ONISHI order you to kill the seven Filipinos?
A Yes.

Q Did ONISHI order you to give the Filipinos a trial before killing them?
A No.

Q What did you tell him when you received his orders?
A I did not say a thing at that time but I was thinking of asking him to save them at a later date.

Q Were there other Filipinos killed at Toledo besides these seven?
A No, there weren't any.

Q I will show you a picture marked exhibit "A". I will show you the profile and front view of Tabuo, Chikunori, do you recognize this picture?
A Yes, it is sergeant Chikunori, Tabuo of my company. He was a squad leader.

Q When did he come to Toledo?
A About July 1944.

Q When did he leave Toledo?

A. I'm not sure. I think it must have been about August.

Q. Where did he go?
A. He went to the battalion headquarters at "Naga" near Cebu City.

Q. Why did he go to Naga?
A. To receive training in anti-tank warfare.

Q. How do you know Tabuc left Toledo about August?
A. I ordered him.

Q. Where did you see him again after he left Toledo?
A. I saw him in Cebu City about the middle of November.

Q. What was he doing when you saw him?
A. He was in the dispensary.

Q. What was he doing in the dispensary?
A. He was receiving treatment.

Q. What kind of treatment was he receiving?
A. I think he was having treatment for skin eruptions.

Q. Did he have yellow jaundice?
A. Yes.

Q. How do you know this?
A. He said so.

Q. Explain his condition at that time?
A. He had skin eruptions and had lost weight.

Q. Where did Tabuc go from here?
A. He return to the company at Babag.

Q. Was Tabuc ever at Guadalupe?
A. Yes.

Q. What was he doing there?
A. He was receiving treatment.

Q. When did Tabuc return to the company at Babag?
A. I think it was about February 1945.

Q. Did Tabuc ever retrun to Toledo after he left there in 1944?
A. No.

Q. How do you know this?
A. I never saw him return.

Q. Could it be that Tabuc was at Toledo and you didn't know about it?
A. It couldn't be.

Q. Where were you on 2 November 1944?
A. I was at Toledo.

Q. On 2 November 1944, a Filipino was tied to a tree near the Municipal building and bayonetted to death by three Japanese soldiers. Who did it?
A. I don't know.

Q. Did you hear about this incident?
A. No I didn't hear.

Q. Were you commanding the unit which was at Toledo at that time?
A. Yes.

Q. Were executions carried out without you knowing it?
A. I don't know of such things.

Q. Were there any persons besides you who had the power to give orders?
A. The battalion commander.

Q. You should know about it if the battalion commander gave orders.
A. I don't know.

Q. Were executions carried out while you didn't know about it?
A. It couldn't be. Orders cannot be carried out while I still don't know about it.

Q. Was Tabuo one of the persons who killed the Filipino on 2 November 1944?
A. No, there weren't such a thing.

Q. Why?
A. He wasn't at Toledo.

Q. How many men were in your company at Toledo at that time?
A. About 40 men.

Q. Of the 40 persons could it be that you didn't know Tabuo was one of them?
A. It couldn't be.

Q. How far away was the place where you slept from the Municipal building?
A. I don't know, if there was a municipal building or not.

Q. In case you sent a soldier on a certain mission out of the city and in case that soldier returned, would it be his duty to report to you?
A. Yes.

Q. Are there any persons still living who were with you at Toledo on 2 November 1944?
A. Yes. Sgt. MORIYAMA, Miori, Corporal IKEGAMI, Masumi. I think the others were most likely all killed.

Q. Do you make this statement on your own accord and free will?
A. Yes.

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A. I don't knew.

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Q. Do you make this statement on your own accord and free will?
A. Yes.

Q. What kind of penalty did you give Mr. OGATA?
A. One week's close arrest. (suspension of duty, confinement to quarters and lost of ½ pay for period under arrest) This was the heaviest penalty.

Q. Why did you hesitate to the killing of the seven Filipinos?
A. Because I wanted to speak to the battalion commander once more.

Q. Did you make this statement because of force, promise or threat?
A. No.

8 March 1946

signed: KAWAHARA, Hajime

Witness to signature of Hajime, KAWAHARA
T/4 Masanori MORITA 20109287

Hajime KAWAHARA

Subscribed and sworn to before me this 8th day of March 1946 at POW Camp # 5, Nichols Field, Luzon, P.I.

/s/ Abraham Fishman
Capt. JAGD

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8 March 1946

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Witness to signature of Hajime, KAWAHARA
T/4 Masanori MORITA 30109287

Hajime KAWAHARA

Subscribed and sworn to before me this 8th day of March 1946 at POW Camp # 5, Nichols Field, Luzon, P.I.

/s/ Abraham Fishmen
Capt. JAGD

TABUO
CHIKANORI
TABUO
CHIKANORI

AFFIDAVIT

I, SHIRO SERA ASN 30110624,
being first duly sworn, on oath state that I am a qualified Japanese translator on duty with Translator Interpreter Service, GHQ, AFPAC, APO 500, Manila Echelon; that in the course of my duties I translated the attached statement of KAWAHARA, HAJIME that in my opinion the above is a full, true and correct translation of said statement.

/s/ Shiro Sera
/t/ SHIRO SERA

Subscribed and sworn to before me at Manila, Philippine Islands, on 12 March 1946.

/s/ P. V. Castillo
/t/ PROMENCIO V. CASTILLO
1st Lt., INF., PA.
Investigating Officer,
War Crimes Investigating
Detachment.

A CERTIFIED TRUE COPY:

Rodolfo Zagueira
1st Lt. AGD

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

UNITED STATES OF AMERICA

-vs-

CHIKANORI TABUO

PUBLIC TRIAL

VOLUME III

PAGES 155 to 223

DATE 4 April 1946

MANILA, P. I.

COPY NO. 4

AUTHENTICATION

THIS CERTIFIES that this Volume is a part of the Proceedings of the Military Commission appointed by Letter Order, AG 000.5 (12 Feb 46) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 12 February 1946, Subj: Trial of Chikanori Tabuo; 1st Indorsement to basic letter, AG 000.5 (12 Feb 46) LS General Headquarters, United States Army Forces, Pacific, dated 12 February 1946; par. 2 of Special Order No. 76, Headquarters, United States Army Forces Western Pacific, dated 1 April 1946; and letter dated 1 April 1946, Subj: Summoning and Swearing Witnesses for Tabuo's Trial, in the trial of the case of the United States of America v. Chikanori Tabuo.

Dated 6 April 1946.

Francis A Hause

FRANCIS A. HAUSE
Colonel, CAC, USA
President of Commission

BEFORE THE
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces,
Western Pacific

* * * * * * * * * * * * * * * * *

UNITED STATES OF AMERICA

-vs-

CHIKANORI TABUO

* * * * * * * * * * * * * * * * *

PUBLIC TRIAL

Court No. 1
High Commissioner's Residence,
Manila, P. I.
4 April 1946

Met, pursuant to adjournment, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL FRANCIS A. HAUSE, CAC, PRES. & LAW MEMBER
LIEUTENANT COLONEL THOMAS H. ALLEN, INF (Armd)
LIEUTENANT COLONEL STARLEY N. BOYKIN, JR., INF.
CAPTAIN WILLIAM O. LUTZ, INF
CAPTAIN GLENN W. HENDRICKS, FA

APPEARANCES:

FOR THE PROSECUTION:

CAPTAIN ABRAHAM FISHMAN, JAGD, Chief Prosecutor
1ST LIEUTENANT PRUDENCIO V. CASTILLO, JAGD

FOR THE DEFENSE:

1ST LIEUTENANT IVAN H. GORDON, TC

OFFICIAL INTERPRETERS FOR THE COMMISSION:

VISAYAN:

FILOMENA ZOSA
JOSE BATUCAN
PRAXEDIO VILLALUZ

JAPANESE:

2ND LIEUTENANT RAYMOND NIMURA
T/3 GEORGE S. BABA
T/4 GEORGE USHIJIMA

OFFICIAL REPORTERS FOR THE COMMISSION:

ARNOLD COHEN
WILLIAM E. RICE

I N D E X

WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS	COMMISSION
Hisashi Morita	155	160			
Pastor Fernandez	164	171	178		
Teofilo Syson	180	193			
Jose Bahina	208	211			213
Manuel Bahina	213	218			

The Commission convened, pursuant to adjournment, at 0830 hours in Court No. 1, 4 April 1946, High Commissioner's Residence, Manila, P.I.

COL. HAUSE: The Commission will be in session.

CAPT. FISHMAN: Sir, all five members of the Commission, the Accused, Defense Counsel and Prosecution are present. The Prosecution requests leave at this time to substitute certified true copies for Prosecution's Exhibits.

COL. HAUSE: Any objection?

LT. GORDON: No objection.

COL. HAUSE: They may be so substituted. There is no objection.

CAPT. FISHMAN: I believe the Defense is ready to proceed.

LT. GORDON: Call Hisashi Morita.

HISASHI MORITA

called as a witness by the Defense, being first sworn testified as follows through Interpreters Nimura, Babe and Ushijima.

DIRECT EXAMINATION

BY LT. GORDON:

Q What is your name?

A Hisashi Morita.

Q In the month of October 1944 what was your rank in the Japanese Army?

A Sergeant, Medical Corps.

Q Do you know a Japanese soldier by the name of Chikanori Tabuo?

A I know his face.

Q Do you see him in the courtroom this morning?

A Yes.

Q Will you point him out?

A (Pointing.)

LT. GORDON: Let the record show that the witness pointed to the Accused in answer to the question.

Q In October 1944 where were you stationed?

A At Mandaue.

Q From Mandaue where did you go?

A From Mandaue I went to Guadalupe.

Q When in the month of October did you leave to go from Mandaue to Guadalupe?

A I do not remember clearly, but I think it was around the middle of October.

Q Were you working in the dispensary at Mandaue when you left?

A Yes.

Q Did you work in the dispensary at Guadalupe when you arrived there?

A Yes.

Q Do you remember whether Tabuo was a patient in the dispensary at Mandaue?

A I did not see him at Mandaue.

Q Was he a patient in the dispensary at Guadalupe?

A I saw him at Guadalupe.

Q Do you know when Tabuo came to the dispensary at Guadalupe?

A I do not remember the exact date.

Q When, about, approximately, did Tabuo come to the dispensary at Guadalupe?

A I believe it was around the end of October or the beginning of November.

Q Do you know from what illness Tabuo was suffering when he came to the dispensary?

A When he came to the dispensary the medical officer made a diagnosis and he told me to give him medicine. It was yellow jaundice.

Q Who was the medical officer in charge of the dispensary when Tabuo came there?

A Medicial officer Kimura.

Q Was Tabuo a litter patient or an ambulatory patient when he came to the dispensary at Guadalupe?

A I do not remember clearly. I think he was able to walk.

Q When he was confined to the hospital by the medical officer, was he a litter patient or an ambulatory patient?

A I believe he was able to walk.

Q How often did you see Tabuo while he was in the dispensary?

A Two or three times.

Q Do you know when Tabuo was discharged from the dispensary as cured?

A I do not know.

Q When did you leave the dispensary?

A The bombing was quite heavy at that time and I do not quite remember very clearly, but I think I was there about one month, but I do not remember that clearly.

Q Do you mean that you left the dispensary some time in the latter part of November 1944?

A I do not remember clearly, but it may have been the middle or latter part of November.

Q Do you know whether Tabuo was still confined to the dispensary when you left?

A I do not remember clearly.

Q What were your duties at the dispensary?

A When he came to the dispensary the medical officer made a diagnosis and he told me to give him medicine. It was yellow jaundice.

Q Who was the medical officer in charge of the dispensary when Tabuo came there?

A Medicial officer Kimura.

Q Was Tabuo a litter patient or an ambulatory patient when he came to the dispensary at Guadalupe?

A I do not remember clearly. I think he was able to walk.

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Q How often did you see Tabuo while he was in the dispensary?

A Two or three times.

Q Do you know when Tabuo was discharged from the dispensary as cured?

A I do not know.

Q When did you leave the dispensary?

A The bombing was quite heavy at that time and I do not quite remember very clearly, but I think I was there about one month, but I do not remember that clearly.

Q Do you mean that you left the dispensary some time in the latter part of November 1944?

A I do not remember clearly, but it may have been the middle or latter part of November.

Q Do you know whether Tabuo was still confined to the dispensary when you left?

A I do not remember clearly.

Q What were your duties at the dispensary?

A I was an office worker.

Q And as an office worker was it your business to keep the records of the patients who were admitted and discharged from the dispensary?

A My work in the office was different. I was not taking down such things .

Q Do you know whether a roll call of the patients in the dispensary was taken daily?

A After going to Guadalupe it was taken every day in the morning and in the evening.

Q If one of the patients was missing from the roll call, would it have been reported to you?

A Not to me, but to medical officer Kimura, who was the head.

Q Do you think that if a patient was absent from one of the roll calls, it would have come to your attention, you would have known about it?

A I would not know. The head of the dispensary, medical officer Kimura, he would know.

Q After you left the dispensary, where did you go?

A I went to the mountains.

Q Did you ever meet Tabuo in the mountains?

A No.

Q After you surrendered to the Americans,when did you see Tabuo again for the first time?

A I met him once at the camp in Leyte.

Q Did you speak with him?

A No, I have not spoken.

Q After you met him in Leyte, did you see him again?

A After that I met him at the camp in Calamba.

Q Did you speak with him then?

A I have never spoken to him.

Q Will you tell me once again when you think it was that Tabuo was admitted to the disponsary?

A I do not remember the exact date.

Q About when?

A I do not remember this clearly, but as I said before around the end of October or the first of November.

Q How is it that you can recall Tabuo being in your dispensary during the month of October and November 1944? Is there any particular reason why you can recall him being there?

A Because we moved from Mandaue to Guadalupe around the middle of October and a while after that I saw him.

LIEUTENANT GORDON: That's all.

CAPTAIN FISHMAN: We have some questions, sir.

COLONEL HAUSE: Proceed.

CROSS EXAMINATION

BY LIEUTENANT CASTILLO:

Q When did you see Tabuo in the dispensary at Guadalupe for the first time?

A As I said before I don't remember the exact date.

Q Was he there already when you arrived at the dispensary at Guadalupe?

A When I went there it was the very beginning so he wasn't there yet.

Q Did you receive him when he entered the dispensary at Guadalupe?

A I don't remember.

Q Do you know who received Tabuo in the dispensary at Guadalupe?

A I don't remember.

Q When you saw Tabuo for the first time in Guadalupe was that the first time Tabuo entered the dispensary or was he there already?

A I gave him medicine once but I don't know whether he was there before. Please ask Medical Officer Kimura. Medical Officer Kimura examined Tabuo's illness so he should know.

Q Tabuo has stated while testifying here that it was you, Morita, who received him in the dispensary at Guadalupe when he entered there.

LIEUTENANT GORDON: May I have the question read?

(The last question was read by the reporter.)

LIEUTENANT GORDON: I object to that question. There is no such statement in the record by Tabuo.

COLONEL HAWKE: I don't recall that definitely, whether or not that statement was made. However, before that question can be asked, if you insist on asking it, we will have to have the record read showing that portion.

LIEUTENANT CASTILLO: If the Commission will allow it, I am willing to withdraw the question.

COLONEL HAUSE: You will withdraw the question? All right. Proceed.

Q When did you leave the dispensary at Guadalupe?

A I don't remember this very clearly. Bombing was quite severe at the time. But I think it was around the middle of November or the end of November.

Q Were the patients still in the dispensary when you left that place?

A I don't remember very clearly so please ask Medical Officer Kimura about the patients.

Q Did you not leave the patients there when you went away?

A I don't remember clearly.

Q Where did you go when you left the place?

A The mountains to the rear of Guadalupe.

Q Did you not bring the patients in Guadalupe with you at that time?

A I went ahead to see about housing so I believe the patients were still there. At that time bombing was quite severe so

I don't recall it quite clearly.

Q After leaving the place at that time did you ever come back to the dispensary at Guadalupe?

A Yes, after I went to the mountains I came once in a while for purposes of liaison.

Q Were you in the dispensary when Tabuo was discharged?

A I don't recall when Tabuo was discharged.

Q Did he not bid you good-by when he went away from the dispensary?

A I don't remember.

Q Are you sure you were not in the dispensary any more during the latter part of November?

A I wouldn't remember that clearly.

Q How about the month of December 1944? Were you still in the dispensary?

A I believe I was in the mountains in December.

Q How many times in all did you see Tabuo in the dispensary at Guadalupe?

A About two or three times.

Q Do you remember being investigated in the prisoner of war camp No. 1 at Lupow by an officer on March 7 1946?

A Yes, I was investigated.

LT. CASTILLO: May I have the permission of the Commission to let me ask the witness to identify this document, sir?

COL. HAUSE: There is no objection.

Q Do you know what this document which I ask the Commission to be marked Prosecution's Exhibit 3; will you see if you recognize it?

A Yes, I have seen this before.

COL. HAUSE: Any objection to having that marked Exhibit 3 for purposes of identification?

LT. GORDON: No objection.

COL. HAUSE: It will be so marked.

Q Do you recognize the signature here? Will you seeif it is yours?

A Yes.

Q While you were investigated on March 7, 1946 at Luzon Prisoner of War Camp No. 1, the question, "While you were at Guadalupe, how many times did you see Tabuo?" was asked, and you answered, "I just saw him once." Is this right?

A I stated in my second statment and changed that statement, that I had seen him twice or three times.

Q After making this statement at Prisoner of War Camp No. 1, were you in the same tent with Tabuo?

A Yes.

Q When you slept together at night in the same tent?

A You mean that night — anyway we were in the same tent.

Q Did you not talk together that night with respect to this case for which you were investigated?

A I have never spoken to him about it.

Q Did you play any kind of game with Tabuo while you were in that same tent after you were investigated with respect to this matter?

A I have played games with him, such as cards and Japanese chess.

Q And you never talked to him, in spite of that?

LT. GORDON: Just a moment, does the question mean about this case? Will you add that to the question? If he played games, they probably talked.

COL. HAUSE: We are getting a little far away from the subject, so let's confine ourselves to the Charge and Specification.

CAPT. FISHMAN: The witness has stated under direct examination he has never spoken to Tabuo. We want to establish that the witness was lying, that he did talk to Tabuo.

COL. HAUSE: Then that question should be asked in a different manner. Will the Reporter read the question back that has to do with playing games?

WHEREUPON, the Reporter read the question and answer as follows:

"Q Did you play any kind of game with Tabuo while you were in that same tent after you were investigated with respect to this matter?

A I played games with him, such as cards and Japanese chess."

COL. HAUSE: I believe that does not answer the question. I am not convinced the witness understood these games took place at that particular time. I think you should bring out whether or not it was before or after this investigation.

LT. GORDON: I further believe, sir, that the question should so state if it was about anything, or about this case. After all, we are dealing with foreign witnesses and the questions are being translated. They don't quite get the drift of general questions.

COL. HAUSE: I quite agree as to general questions, and they must be specific. You may continue your questioning.

CROSS EXAMINATION (CONT.)

BY CAPT. FISHMAN

Q Did you play any games with Tabuo after your investigation at Calamba Prisoner of War Camp?

A I believe Tabuo was not there after I was investigated.

COL. HAUSE: Tabuo was investigated, or whether the witness was investigated?

CAPT. FISHMAN: The question was, "You were investigated".

Q Are you sure that you did not sleep in the same tent with Tabuo after you were investigated at the Prisoner of War Camp at Calamba?

A I believe I remember that after I was investigated he was not there when I returned, and he was saying something about going to Manila.

Q When was it that he said something about going to Manila? Was it after you returned from your investigation?

A When I returned from the investigation he was already gone.

Q Before you were investigated at the Prisoner-of-War Camp in Calamba did you ever talk to Tabuo about anything at that camp?

A I may have kidded around with him but I don't remember clearly.

CAPTAIN FISHMAN: That's all, sir.

COLONEL HAUSE: Redirect?

LIEUTENANT GORDON: No redirect, your Honor.

COLONEL HAUSE: Any questions by members of the Commission? There appear to be none. The witness will be excused.

LIEUTENANT GORDON: The Defense rests, your Honor.

COLONEL HAUSE: Does the Prosecution have anything further to offer?

CAPTAIN FISHMAN: Yes, sir, we have several witnesses.

COLONEL HAUSE: At this time the Commission will take a ten-minute recess.

(At 0920 hours the Commission recessed until 0930 hours, at which time the proceedings were as follows:)

COLONEL HAUSE: The Commission will be in session.

CAPTAIN FISHMAN: Sir, all five members of the Commission, the Accused, the Defense Counsel and Prosecution are present.

PASTOR FERNANDEZ

called as a witness by the Prosecution, was sworn and testified as follows through Interpreters Zosa, Batucan, and Villaluz:

DIRECT EXAMINATION

BY CAPTAIN FISHMAN:

Q What is your name?

A Pastor Fernandez.

Q How old are you?

A Sixty years old.

Q What is your occupation?

A I am a merchant.

Q Are you a Filipino citizen?

A Yes, sir.

Q Where do you live now?

A I live in the town of Toledo, Cebu.

Q Where did you live in 1944?

A I lived in Toledo.

Q Do you know the Accused in this case?

A Yes, sir.

Q What is his name?

A Tabuo is his name.

Q Do you see him in this courtroom?

A Yes, sir.

Q Will you point to him?

A (Pointing.) He is there.

CAPTAIN FISHMAN: I state for the record that the witness pointed toward the Accused.

Q About when is the first time that you saw Tabuo in Toledo?

A At the time when he went to Toledo with his troops.

Q About when was that?

A On or about the month of October 1944.

Q When is the last time that you saw Tabuo in Toledo?

A In the month of November Tabuo was no longer in Toledo.

Q Do you know about when in November he left Toledo?

A In my personal knowledge I knew that he was out of Toledo on November 4 and 5 of that same year.

Q Between the time when you first saw Tabuo in Toledo and November 4 or 5, 1944, about how often did you see Tabuo in Toledo?

A Many times I saw and met him.

Q About how many times each week?

A If I am at home I see Tabuo because my house is near the market place, but if I am out of my house I don't see him.

Q Did you see Tabuo in Toledo many times during October 1944?

A Yes, sir, I often see him because my house and the garrison are near each other.

Q At what places in Toledo did you used to see Tabuo?

A At the market place.

Q What was Tabuo doing at the market place?

A Sometimes I saw him giving medical treatment to children.

Q How do you know that his name is Tabuo?

A I know that his name is Tabuo because the people around the market will say that Tabuo is coming as soon as he is going to the market.

Q Did you ever hear the people call him Dr. Tabuo?

A The people say that he is a medicine man because he applies medicine to wounds and skin diseases of people in Toledo.

Q Was Tabuo well known to the people in Toledo?

A Yes, he is well known by the people in the market place.

Q Did Tabuo ever give any medical treatment to any of your children?

A Yes, sir, he gave medicine — he treated my child at home.

Q Were you present when Tabuo treated your child?

A I was in the market place.

Q How do you know that Tabuo treated your child?

A My child was treated right there at the market place.

Q Did you see Tabuo treat your child?

A Yes, sir.

Q What was wrong with your child?

A He got some skin disease on the leg. My child got skin diseases.

Q Where?

A On his leg.

Q Was that on his leg?

A On his leg.

Q When was it that Tabuo treated your child?

A If my memory does not fail me, Tabuo treated my child, if my child is at the market with me, but I did not remember the exact date.

Q Do you remember what month it was that Tabuo treated your child?

A In the month of October.

Q Of what year?

A 1944.

Q How do you know it was October?

A Because I used to be at the market place during the month of October.

Q Did you ever go to the mountains from Toledo?

A Yes, I go there to get foodstuffs, but I returned to the town right that day.

Q Did you ever flee to the mountains from Toledo?

A Yes I fleed to the mountains when the Japanese invaded the town of Toledo.

Q When was it that you fled to the mountains?

A At the time when the Japanese invaded Toledo I went to the mountains.

Q When was that?

A I do not remember the exact date but the time when Japanese invaded Toledo I ran away to the mountains.

Q What month was it?

A I do not exactly remember the month because I did not bother myself to know the month that the Japanese invaded Toledo, but what I know, I was in Toledo in the month of October.

Q How do you remember you were in Toledo in the month of October?

A Because the Japanese forced me to come down to the town in the month of October. The Japanese said that if I won't come down to town they will machine gun and burn my house in the town of Toledo.

Q Did you return from the mountains to Toledo then in the month of October?

A I came down to the town in the month of September, yes, but I used to go back to the mountains, but definitely I came down and lived in the town of Toledo in the month of October.

Q And are you sure that you saw Tabuo in Toledo during the month of October 1944?

A Yes, sir.

Q How many times did Tabuo treat your son?

A I presume he treated my child three times.

Q Did Tabuo ever abuse you or any member of your family?

A No, sir.

Q Were you grateful to Tabuo for curing your son?

A Well, I say that I was grateful to him because my child was cured by Tabuo's treatment, (witness laughing) but if the child was not cured by treatment given by Tabuo, I would not give a damn.

Q Was your child cured by Tabuo?

A He was cured because there was no more visible ailment on his leg.

CAPT. FISHMAN: That is all.

CROSS EXAMINATION

BY LT. GORDON:

Q Mr. Fernandez, you said you were a merchant. What do you sell?

A I sell sometimes dried fish, sometimes salted fish.

Q You said that you had to go and make trips into the mountains to get your products to sell. Did you have to go into the mountains to get dried fish and salt fish?

A Yes, sometimes I go there, I went to the mountains and sold dried fish and salt fish, and then from the money I buy some thing and brought them to the town of Toledo.

Q Oh, I understand you then, you went to the mountains to sell your products; is that right?

A Yes, sir.

Q Where did you get your fish to sell?

A At the market place.

Q During the month of October 1944 do you remember what products you sold?

A The same thing.

Q How many Japanese soldiers would you say were in the town of Toledo when you came back from the mountains after fleeing?

A I didn't count.

Q Approximately. Give me an idea how many you thought were in the town.

A I cannot give you the exact number because they were scattered.

Q Did you ever see as many Japanese soldiers in one group as you see people in the courtroom today?

A There was more than those present in the courtroom.

Q Then there were more than 20 or 25, would you say?

A I guess so.

Q Did you know the names of any other Japanese soldiers?

A Well, I only know Tabuo and two Japanese captains.

Q What were the names of the Japanese captains?

A The first one was Captain Tuyama.

Q Who was the second one?

A The second one I don't remember his name any more.

Q Were these Japanese officers in town at the same time that Tabuo was there?

A They were there before Tabuo came.

Q Did they leave when Tabuo came?

A Captain Tuyama came and lived in Toledo before Tabuo and his men came. The other captain, who was the direct superior of Tabuo, whose name I don't remember now, came with Tabuo.

Q How is it that you can't remember the captain's name, yet you can remember Tabuo's name?

A I didn't bother to ask the name of that captain, only I know Tabuo.

Q Wasn't the captain moving about the town and just as much in evidence, seen just as often in the town, as Tabuo was?

A Yes, he went around the town but I didn't bother to ask about his name.

Q When Tabuo came to the market place did he come with any other Japanese soldiers?

A Sometimes he went to the market with another Japanese companion but sometimes he went there alone.

Q What month did you leave Toledo to go to the mountains?

A At the time when the Filipino guerrillas told the people to evacuate to the mountains, that was the time when I went to the mountains.

Q What month of the year 1944 was that?

A At the time when the Japanese invaded Toledo.

Q What month of the year was that?

A I didn't remember.

Q How is it that you can remember the month of October so well but you can't remember the other month?

A Well, I couldn't remember because what was inside myself was fear of the Japanese; I didn't think of any things to remember, only the way to escape and be free from those Japanese.

Q Weren't you just as afraid of the Japanese when you returned to Toledo as when you left?

A I was still fearful but because the Japanese said that if the people from the mountains wouldn't come down to the

town, the Japanese would cut off their necks.

Q Who told you that the Japanese would cut off your necks if you didn't come down from the mountains?

A The Japanese made an announcement in the town that if you people in the mountains won't come down, you will lose your heads.

Q But you were in the mountains when they made this announcement. How did you hear of it?

A I know because the chief of police of Toledo went to the mountains and told the people of the Japanese announcement to kill people who won't come down to the town.

Q When you were in the mountains were you afraid that the Japanese would come and find you there before you heard this announcement?

A Yes, we were afraid.

Q Do you know why Tabuo is being tried today?

A Yes, sir.

Q Who told you?

A I know it myself.

Q How do you know it?

A I know it because I learned that Tabuo killed a person in Toledo.

Q When did you learn that Tabuo killed a person in Toledo?

A At the time when Tabuo and his men left Toledo.

Q Who told it to you?

A My neighbors told me.

Q Who?

A My neighbors.

Q What are the names of those neighbors?

A Their names are Sebastian Libre and Alberto Caballes; no more, only two.

Q Alberto Caballes and Sebastian Libre, are they your neighbors?

A Yes, they are my neighbors.

Q How close to you does Alberto Caballes live?

A Close to my house where I live.

Q A kilometer away, half a kilometer, how far?

A Alberto lives about a kilometer from my house, and Sebastian lives about, less than half a kilometer from my house.

Q Did any investigator ever speak to you about the killing that Tabuo is alleged to have committed?

A No.

Q No investigator ever spoke to you about the killing?

A No.

Q How is it that you are here today?

A I was required to testify that Tabuo was at Toledo during the time of the killing.

Q Who asked you to testify?

A The government called me up to be here and testify.

Q Before the government called you up to testify, didn't somebody from the government speak to you about Tabuo and the killing of the Filipino in Toledo?

A Nobody else only the government.

Q When did the government tell you to come up here?

A Last Wednesday of last week.

Q Before last Wednesday, did the government ever tell you that you may have to come to Manila to be a witness in this case?

A Yes, I was told already I would be required to come here.

Q When were you told?

A Before I came over to Manila I was notified in my home town in Toledo to prepare, because I will be brought here in Manila to testify in the case of Tabuo .

Q When were you notified that you would be brought to Manila to testify?

A At the time when Alberto arrived at my place I know that I will be coming over to Manila.

Q Did Alberto come to your place and talk to you about this case?

A Yes, he is a policeman and came to my house and told me about the case.

Q Is Alberto a policeman?

A Yes.

Q Did you ever talk about this case with Sebastian?

A No.

Q Was your house damaged by the Japanese in Toledo?

A My house was not completely damaged, but the walls and the doors and ceilings were taken out.

Q You don't like the Japanese do you?

A I didn't say that I like Japanese.

Q I ask you now, do you like the Japanese?

A No.

Q Do you hate the Japanese?

A I don't hate the good work of the Japanese, but I hated their savage and barbarous acts.

Q Many of the people that you knew in Toledo suffered at the hands of the Japanese, did they not?

A Yes.

Q And you would like to see the Japanese pay for those sufferings, would you not?

A Yes.

Q And it wouldn't make any difference to you what Japanese it was, as long as somebody paid for it; isn't that so?

A Oh, I like these Japanese who committed sufferings and cruelties to the people be punished.

Q But after all, some Japanese are nice, are they not?

A Not all are bad Japanese.

LT. GORDON: That is all.

REDIRECT EXAMINATION

BY CAPT. FISHMAN:

Q Are you testifying in court to things that you know yourself, or to things that someone told you to tell?

A Well, I testified before this court of the facts I knew and not of the facts I do not know.

Q Would you tell a lie in court in order to hang a Japanese who is innocent?

A No, sir, I won't tell a lie.

Q Why not?

A It is not lawful to tell a lie in order to condemn a man, but I only testified to the true evidence and facts I know actually.

CAPT. FISHMAN: That is all.

RECROSS EXAMINATION

BY LT. GORDON:

Q What are those papers in your right hand pocket of your shirt? May I see them?

WHEREUPON, the witness handed a paper to the Interpreter, who handed the paper to Counsel.

Q What are the other papers?

COL. HAUSE: What is the paper?

LT. GORDON: It is a pass.

WHEREUPON, the witness handed another paper to the Interpreter, who handed it to Counsel.

LT. GORDON: What is that?

INTERPRETER ZOSA: This is a diagram showing districts in Manila.

LT. GORDON: I will withdraw the question.

CAPT. FISHMAN: I should like on the contrary to have the Defense Counsel state whether there is anythihg in those papers that will have a bearing on this case?

LT. GORDON: I will withdraw the question. It will not appear in the record.

COL. HAUSE: The question will appear in the record. I should like to have you state whether or not there is anything in those papers that will have any bearing on this case.

LT. GORDON: There is not, sir.

COL. HAUSE: Are there any further questions? There appear to be no further questions. The witness will be excused.

(At 1015 hours the Commission recessed until 1025 hours, at which time the proceedings were as follows:)

COLONEL HAUSE: The Commission will be in session.

CAPTAIN FISHMAN: Sir, all five members of the Commission, the Accused, Defense Counsel and Prosecution are present.

TEOFILO SYSON

called as a witness by the Prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

BY CAPTAIN FISHMAN:

Q What is your name?

A Teofilo Syson.

Q How old are you?

A I am 27 years old.

Q What is your occupation now?

A My occupation now is buying and selling.

Q Are you a Filipino citizen?

A Yes.

Q Where do you live now?

A I live in Toledo, Cebu.

Q Where did you live in 1944?

A I lived in Toledo, Cebu.

Q Do you know the Accused in this case?

A Yes, sir.

Q What is his name?

A Tabuo.

Q Do you see him in the courtroom?

A Yes, sir.

Q Point to him.

A (Pointing.) The fellow in the center.

CAPTAIN FISHMAN: I state for the record that the witness pointed to the Accused.

Q What was your occupation in 1944?

A I was doing farm works.

Q When was the first time that you saw Tabuo?

A The first time I saw him in Toledo, Cebu.

Q When was that?

A That was last September 20th, 1944.

Q About when was the last time that you saw Tabuo in Toledo?

A That was last September 26, 1944, when he killed my cousin Pacita.

LIEUTENANT GORDON: Do I understand that to be September 26?

CAPTAIN FISHMAN: Right.

Q Did you ever see Tabuo in Toledo or in the vicinity of Toledo after September 26, 1944?

LIEUTENANT GORDON: Will the Prosecution Counsel limit the word "vicinity"?

Q Did you ever see Tabuo anywhere after September 26, 1944?

A No more.

Q About how many times all together did you see Tabuo?

A Many times, sir.

Q About how many times?

A About twenty times.

Q During what period of time did you see him?

A During my stay in Toledo.

Q What was the beginning of that period of time when you saw Tabuo?

A May I beg your pardon?

Q Just state out loud what you have to say.

A May I beg your pardon?

Q When was the first time that you saw Tabuo anywhere?

A That was last September 20, 1946.

Q Of what year?

A September 20, 1944, rather.

Q What was the last time that you saw Tabuo anywhere on the island of Cebu?

A That was when he killed my cousin Pacita.

Q What date was it that he killed your cousin Pacita?

A September 26, 1944.

Q How many times did you see Tabuo between September 20, 1944 and September 26, 1944?

A Around twenty times.

Q Where was this that you saw Tabuo those twenty times?

A In the town of Toledo.

Q Where was it that you saw Tabuo when he killed your cousin Pacita?

A That was in the mountains, situated around eight kilometers from the town proper.

Q From what town proper?

A Toledo.

LIEUTENANT GORDON: I object to this line of examination, your Honor, because it is not within the Charge and Specification of this action. I ask that the questions be stricken out and the answers also.

CAPTAIN FISHMAN: Sir, the question is one of identification. I am offering it solely for the purpose of corroborating the witness' identification of the Accused. The question

in this case comes down to whether the Accused was in Toledo or the vicinity of Toledo during a certain period. The Defense has offered witnesses that he was nowhere near there. Prosecution offers witnesses that he was there. The only way that we have to strengthen their testimony is to bring out facts showing why they are certain that they saw him there.

COLONEL HAUSE: Well, that's true, but I think that can be brought out without bringing in another case. As I understand it, the witness is testifying now to another killing that has nothing to do with this case.

CAPTAIN FISHMAN: That's right, sir.

COLONEL HAUSE: So please confine your questions and questioning to what has to do with this case and not become involved in another case.

BY CAPTAIN FISHMAN:

Q Where was it that you first saw Tabuo in Toledo?

A In the town proper, Toledo town proper.

Q What was he doing when you first saw him?

A The first time I saw him was when he halted me when I was riding a bicycle with my child, because I wasn't able to take off my hat when I passed the sentry. And now he asked me, where was I living? I told him that I was living here in town. I told him the house, the place where my house was situated. And at the time I jotted down all events which happened, when it is very memorable, because I was excited at that moment. He asked me the question because he disturbed me at the time.

Q What was the date on which he stopped you when you were riding on your bicycle?

A That was September 20, 1944.

Q How close to Tabuo were you at that time?

A I beg your pardon, sir?

Q How close to Tabuo were you at that time? How many feet away from you?

A About two feet away from him.

Q And about how long did you remain close to him at that time?

A Around ten minutes.

Q Were you looking at him all that time?

A Yes, sir.

Q Were you frightened?

A Yes, sir.

Q Does that incident stand out in your memory?

A Yes, sir.

Q Why?

A Because I was excited at the time, excited and frightened.

Q Before September 26, 1944, what was Tabuo doing when you saw him the other time?

A In what place, sir?

Q Anywhere.

A May I beg your pardon, sir?

Q After the time when you saw Tabuo on September 20, 1944, and before the time when you saw him on September 26, where was it that you saw Tabuo?

LIEUTENANT GORDON: I object to this line of questioning, your Honor. I don't think it tends to prove that this witness knows this Defendant. I think if we confine ourselves to how many times he saw him, where and when, that is sufficient.

We are bringing in too much extraneous matter.

CAPTAIN FISHMAN: That is exactly the question, sir. I am asking him where it was that he saw him.

LIEUTENANT GORDON: He already testified how many times and where he saw him.

COLONEL HAUSE: Objection overruled. The witness will answer the question.

Q When you saw Tabuo between September 20 and September 26, 1944, where was Tabuo?

A He was in Toledo.

Q What was he doing?

A On September 26 he was in the mountains in our house.

Q And before September 26 where was he when you saw him?

A He was in town.

Q What town?

A Toledo, Cebu.

Q What was he doing there when you saw him?

A He was acting as a medical man.

Q What was he doing as a medical man?

A He treats patients sometimes, those people having skin diseases.

Q In what parts of the town of Toledo did you see Tabuo in that period?

A In the town proper, Toledo, Cebu.

Q In what sections of the town proper?

A At the sentry post.

Q Did you see him near the market place?

A Yes sir, I have seen him in the market place.

Q Did you see Tabuo on September 26 1944?

A Yes, sir.

Q Where did you see him on that date?

A I saw him in our house situated eight kilometers from Toledo town proper. That is the time when he killed my cousin Pacita.

CAPT. FISHMAN: Does the Commission desire that I instruct the witness to omit any references to the killing?

COL. HAUSE: Yes, we are only concerned with the Accused or anything he had to do with.

CAPT. FISHMAN: In answering questions, if you can do so correctly, try to omit any reference to the killing. The Commission does not desire to hear any evidence relating to the killing of your cousin Pacita, so that in answering, my question, if you can do so truthfully, try to not mention anything about the killing. Do you understand?

THE WITNESS: Yes, sir.

CAPT. FISHMAN: It is rather difficult, sir, because the incident in which he saw Tabuo on the 26th of September was that time.

COL. HAUSE: Let's don't refer to any name.

CAPT. FISHMAN: Yes, sir. Don't mention the name of any person who was injured in any way on September 26th. Do you understand that?

THE WITNESS: Yes.

Q What were you doing on September 26th 1944 when you first saw Tabuo near your home in the mountains?

A I was eating my dinner. When I was about through I saw him come in.

Q You saw who come in?

A The first was Tabuo, with a.45-caliber pistol.

Q Who was with him?

A His four companions.

Q Were they Japanese soldiers?

A Yes, sir.

Q State what happened?

A When they came in my house, they didn't exactly come into my house because my house was too small, they went to some small cottage rather, they were in my cottage, in the vicinity of my cottage. Tabuo with his.45-caliber pistol, and they asked me not move. I was about to escape at that time because I know that Tabuo will shoot me if I will not escape.

Q Just tell what you saw and heard.

A Now, when Tabuo and his men came to our house, they tried to search all the things we have in the house. Now when they found out nothing could be found, that I am agricultural, he ordered his men to go further in the other houses which were near my house, but Tabuo stayed with me for a few minutes. That was around thirty minutes, enough for me to familiarize his face.

Q Did you have any conversation with Tabuo at that time?

A Yes sir, he asked me questions.

LT. GORDON: I shall renew my objection. I see it does not serve any purpose whatsoever. It is immaterial. I think he should not be allowed to continue.

CAPT. FISHMAN: Sir, if the Defense Counsel will stipulate that this witness saw Tabuo on the 26th of September 1944 at the place he stated, I will abandon the line of questioning.

LT. GORDON: What difference does it make with the issues involved if he saw Tabuo on the 26th of September. We are concerned with the 2nd of November.

CAPT. FISHMAN: Because Tabuo testified that he was not in the area near Toledo at that time, and this witness is establishing that Tabuo is a liar, which is a very material thing.

LT. GORDON: The evidence is Tabuo was not in the town on the 2nd of November. What difference does it make if he was in the town on the 26th of September.

COL. HAUSE: Will the Defense stipulate that the Accused was in Toledo on the 26th of September?

LT. GORDON: I do not believe I can stipulate to that, sir, because —

COL. HAUSE: Your objection is not sustained, and the witness will answer the question.

Q How long were you and Tabuo talking on the 26th of September in your home near Toledo?

A Just about half an hour.

Q Do you remember the conversation?

A A few of them. The first question he asked me, I remember, "Are you a guerrilla?" He asked me that in a not too fluent Visayan dialect. Now I answered him, "I am not a guerrilla, sir, I am a civilian working on a farm." Now I show him my farm which I cultivated, which is situated near my house. Now he asked me many questions, that I was guerrilla, he insisted I was a guerrilla. I told him, "I am a civilian, sir, I am working in the field. I have

nothing to do with the guerrillas." But he was suspicious about me because I was wearing a blue denim shirt at that time, and Tabuo was very suspicious. He suspected me of being a soldier of the mountains. He has very staring eyes, sharp eyes. After that he looked for a handkerchief. I told the wife to look for a handkerchief, and luckily my wife found only a small handkerchief, a very small handkerchief as big as this, (indicating) a woman's handkerchief. I gave it to Tabuo, but Tabuo did not receive it, Tabuo first received it and he inspected the handkerchief and I observed that Tabuo -- I was thinking that Tabuo --

Q Just what you heard, not what you thought.

A Then he said that it is too small. He asked my wife to look for a bigger one, but we were not able to find a bigger one, so I told Tabuo we have none of that kind, and then he took his handkerchief, a big one, it was a nice handkerchief; maybe he valued that handkerchief, because he didn't use it. Now he asked the wife, "You do with the handkerchief I gave you" -- he said in a Japanese language which I cannot answer. Now he offered me 200 pesos Jap money. One was a 100 peso bill and the other was ten 10 peso bills. Now I asked him, "Why will you give me that 200 pesos?" He said, "Because you have so many children."

Q In what language were you and Tabuo talking?

A He talked in Visayan language, "Ako Sabes". That means, "200 pesos." Then when I did not receive his money, he ordered me, but other time I took my child because I was sure Tabuo was going to kill me, because he tried his Japanese saber, he looked at his Japanese saber as if he was going to know if the saber is sharp enough to cut off my head. I was thinking of a way to escape.

Q Just tell what you saw and heard, and did, not what you were

thinking or what you thought Tabuo was thinking.

A Now when he ordered me to put my child down I answered him in a different posture, so that he would not be -- I give him a different answer when he ordered me to put my child down, but the third time when he ordered me to put my child down I escaped away, I spring up and then jump down a cliff to a small brook, but luckily I let my child down right at the top of the hill. When I was down I follow the brook --

Q How far did you run from your house?

A It was about sixty or seventy yards from my house.

Q Did you see Tabuo when you stopped running?

A Yes, sir.

Q Where was he?

A When he was on the hill with my wife and Pacita and his four companions they were spyglassing the place.

Q How long after you escaped did you see Tabuo near your house?

A I beg your pardon, sir?

Q How long after you escaped did you see Tabuo remain near your house?

A I do not get exactly what it was. Will you repeat it once more?

Q After you escaped, did Tabuo remain near your house?

A About a few minutes, about five minutes. After that he went to the hill with my wife and Pacita.

Q While he remained near your house, were you able to see him?

A Yes, sir.

Q Where did he go then?

A He go to a hill.

Q Were you able to see him while he was on that hill?

A Yes, sir, very clear.

Q How far away were you from Tabuo when he was on the hill?

A When he was on the hill that was around twenty yards or twenty-five from my place.

Q How long did Tabuo remain on that hill?

A He remained for around thirty minutes, sir.

Q Were you watching him all that time?

A Well, I watched the place where I was hiding. I wait a little while, about three minutes, I looked at them from the hill. Tabuo would like to investigate these women because they motioned as if to ask questions.

Q How do you know that all this happened on September 26th 1944?

A I beg your pardon, sir?

Q How do you know that this incident happened on September 26th 1944? What makes you sure of the date?

A Because we have to watch that date, sir, because it is always our habit to celebrate anniversary of their decease.

Q What makes the date September 26th 1944 stand out in your mind?

A Because Pacita was killed at that time.

Q Did you see it? Did you see a killing on that date?

A Yes, sir.

Q Did you see who did it?

A Yes, sir.

Q Who did it?

A Tabuo.

Q Is that why that date stands out in your mind?

A Yes, sir.

Q Did you ever observe the anniversary of that date after September 26th 1944?

Q How far away were you from Tabuo when he was on the hill?

A When he was on the hill that was around twenty yards or twenty-five from my place.

Q How long did Tabuo remain on that hill?

A He remained for around thirty minutes, sir.

Q Were you watching him all that time?

A Well, I watched the place where I was hiding. I wait a little while, about three minutes, I looked at them from the hill. Tabuo would like to investigate these women because they motioned as if to ask questions.

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A Because we have to watch that date, sir, because it is always our habit to celebrate anniversary of their decease.

Q What makes the date September 26th 1944 stand out in your mind?

A Because Pacita was killed at that time.

Q Did you see it? Did you see a killing on that date?

A Yes, sir.

Q Did you see who did it?

A Yes, sir.

Q Who did it?

A Tabuo.

Q Is that why that date stands out in your mind?

A Yes, sir.

Q Did you ever observe the anniversary of that date after September 26th 1944?

A Yes sir, we observed it.

Q In what way?

A By banquet, by making a little feasting.

Q Did you observe the anniversary of that date during 1945?

A Yes, sir.

Q Where?

A At Toledo.

Q How did you know that Tabuo's name was Tabuo?

A Because some of his cooks -- when I was living in the town proper, before I went to the mountains, his cooks and companions will call him Tabuo.

Q Did you hear his cooks and companions call him Tabuo?

A Yes, sir.

CAPTAIN FISHMAN: That's all, sir.

COLONEL HAUSE: Questions by the Defense?

CROSS EXAMINATION

BY LIEUTENANT GORDON:

Q Do I understand you to say that when you met Tabuo on the 20th of September 1944 for the first time you jotted down these facts?

A It is not 28, sir; it is the 26th, September, 1944.

Q Now, you met Tabuo for the first time -- I think he stopped you when you were riding on a bicyle or something.

A Yes, sir.

Q On the 20th of September.

A No, I did not meet him on 28 of September.

Q Twenty, twenty.

A No, I did not meet him on September 28. Oh, the 20th?

Q Twenty.

A Twentieth? Yes, sir, I met him on September 20.

Q That was the first time you met him?

A Yes, sir.

Q Then you went home or you went somewheres and jotted down in a book?

A Yes, sir, in my diary.

Q Where is your diary now?

A I left it at home but I made a copy.

Q Where is the copy?

(Witness produces paper from pocket.)

Q Why didn't you bring your diary with you?

A Well, I am afraid that it might get lost because I am careless sometimes. I just had this note because it is easy to take out of my pocket.

Q How big is your diary?

A Well, the diary is a little book, as big as this (indicating).

Q Didn't you bring any clothes with you?

A May I beg your pardon, sir?

Q Didn't you bring any clothes with you when you came to Manila today?

A Clothes?

Q Clothes, clothes.

A Well, I only bring one suit, a shirt.

Q Weren't you afraid of being careless about those and losing those?

A Well, you know my diary is more precious than my clothes.

Q Did you copy everything from your diary that pertained to that matter?

A Not exactly the whole thing; I only copied important points.

Q You didn't know what exactly would be required of you today, did you?

A I did not know but I know at least the important points, the important events.

Q But you think they are important. Maybe we think that there are a lot of other things that might have been important in that diary. Weren't you afraid that that might be needed?

A No, because I am not aware of that.

Q When you saw Tabuo for the first time what sort of a uniform was he wearing?

A He, Tabuo?

Q Yes; he, Tabuo.

A He was wearing a Japanese uniform.

Q Did it have any insignia on it?

A Insignia?

Q Yes.

A Well, I did not see his insignia; I only saw his clothes.

Q Well, where do the Japanese soldiers usually have their insignia?

A May I beg your pardon, sir?

Q Where do the Japanese soldiers usually have the insignia of their rank on their uniform?

A Well, I don't know exactly that, sir, because I was not with their outfit. I don't know where they would place it. I only saw at the time that he was wearing a khaki uniform with the small seams, like a britch, britches.

Q Now I ask you, during this war you have seen a lot of Japanese soldiers, have you not?

A Many of them.

Q Do you know where they wear their insignia of rank?

A I don't know, sir.

Q Do you know where the American soldiers wear their insignia of rank?

A American soldiers?

Q Yes.

A Yes, sir.

Q Where?

A Right here (indicating shoulder).

Q That's the officers. Where do the noncommissioned officers wear them?

A Noncommissioned should be here (indicating sleeve).

Q And in all your experience with the Japanese soldiers in this war you never noticed where they wore their rank?

A Never.

Q Have you seen a lot of Japanese soldiers?

A Many, sir, but I don't know what his rank is because I'm not very particular about it, whereas the American soldiers I know because I am a soldier myself.

Q Were you a soldier in 1944?

A No, sir, 1941.

Q When did you become a soldier?

A 1941.

Q And when did you stop becoming a soldier?

A That was last of 1942.

Q Did you have any of your uniforms in your hut?

A Yes, sir, this one.

Q You wore those uniforms in 1944?

A 1944? I did not have this. I have this only when I was processed in Cebu.

Q During this past war did you engage in any guerrilla activities?

A Before the incident of September 26, 1944, I have joined the guerrilla.

Q You have joined the guerrilla?

A Yes, sir.

Q And when did you separate from the guerrilla?

A That was last of 1942.

Q The last of 1942?

A Yes.

Q Are those dates in your diary?

A Diary? Yes, sir.

Q Do you know the exact dates?

A Yes, sir.

Q What are they?

A That was December 15 when I stopped the guerrilla; that was December 15, 1943 already.

Q September 15?

A No, not September, December 15.

Q How do you know that that was the exact date?

A Because I also have placed it in my processing paper.

Q And you remember the day?

A Yes, sir, very fresh.

Q When did you look at those papers last?

A When I was discharged, that was last February, 1946; February 11, 1946.

Q That was when?

A February 1946 when I was discharged, so it was very fresh in my mind.

Q But you said you were discharged in 1942.

A No, discharged -- I began serving the guerrilla last

of 1942 to 1943.

Q Yes.

A September 15, 1942 to December 15, 1943.

Q Yes.

A Now, when I was -- when the incident happened I was already a civilian because I have surrendered to the Japs.

Q All right. Did you rejoin the guerrillas after the Japs left Toledo?

A No more, sir.

Q Well, you just said you were discharged February 11, 1946. From where were you discharged?

A At the time when I resumed my position here as a soldier in the Philippine Army.

Q That is what I am trying to find out. When did you resume your position as a soldier?

A As a soldier of the guerrilla or the Regular Army, Philippine Army?

Q I understand, then, that you joined the Regular Army after this incident took place, is that right?

A Yes, sir.

Q And you didn't call yourself a guerrilla?

A After the incident I did not do anything with the guerrilla. During and after the incident I was not with the guerrilla.

Q When did you rejoin?

A Rejoin the Philippine Regular Army, you mean?

Q All right, the Philippine Regular Army.

A That was September 28, sir.

Q When?

A When we arrived at Leyte, September 28, 1946.

Q September 28, 1946?

A Not 46, 45, sir. Excuse me.

Q So then from 1943 to September 1945 you were a civilian?

A From 1943? No, December 15, 1943.

Q December 15, 1943 you were discharged from the guerrillas?

A Yes, sir, December 15, 1943 to September 27, 1945 I was a civilian at those times.

LIEUTENANT GORDON (To the reporter): What was the date?

(The last answer was read by the reporter.)

Q When you left the guerrillas did you take your gun with you?

A What is it, sir?

Q When you left the guerrillas, when you were discharged from the guerrillas, did you take your gun with you?

A I had no gun, sir.

Q Did you have any arms?

A I don't have any, sir.

Q Do you know what a Japanese officer looks like? Is there any difference in his uniform from a noncommissioned officer or a private?

A Well, I don't know, sir, whether he is an officer or a noncom; I could not recognize.

Q You are a soldier. Aren't you interested in what the enemy wears?

A I am not so particular about it, sir.

Q Aren't you more interested when you are fighting to kill an officer than to kill an ordinary private?

A May I beg your pardon, sir?

Q Aren't you more interested when you are fighting to kill an officer, who is more important than an ordinary private?

A I don't get exactly the question, sir. Will you please repeat it again?

LIEUTENANT GORDON: I withdraw the question.

Q In your training as a soldier are you not taught how to distinguish between the uniforms of the various members of the enemy organization?

A Well, we were never taught, sir.

Q Are you taught how to distinguish between the uniforms of your own Army?

A We are taught, sir. We have a handbook.

Q And you are not given any handbook about the Japanese Army?

A Of course not, sir.

Q Now, when Tabuo came to your house on the 26th of September how was he armed?

A He was armed with a bayonet on his left side, with a saber, and with a pistol which was slinged to the right shoulder sling, .45 caliber pistol.

Q How was he dressed?

A He was dressed in a Japanese khaki, not like this khaki, of course.

Q In any of your training have you ever been told or informed how the various members of the Japanese Army are armed? Do you know what arms the officers of the Japanese Army carry?

A That the officers of the Japanese Army have?

Q What do they carry?

A Officers?

Q How are they armed, yes?

A Officers of the Japanese Army?

Q Yes.

A I don't know, sir.

Q Do you know how the privates are armed?

A Never, sir.

Q Do you know whether they carry sabers, swords? Do you know whether privates carry swords in the Japanese Army?

A In the Japanese Army? May I beg your pardon, sir? I do not have it clear.

Q Do you know whether the privates -- do you know what a private is?

A Yes, sir.

Q Do you know whether the privates in the Japanese Army carry swords?

A I don't know, sir.

Q You don't know whether they do, or you don't know whether they do not?

A I do not know, sir.

Q When you were a guerrilla what were you taught about the Japanese Army?

A What was I taught?

Q Taught. What did you learn? Did you learn what sort of uniforms they wore? Did you know that the color of their uniform is different from the color of the American uniform?

A We were told only the type of suit they are wearing and the color.

Q You were only taught what?

A The color of their uniforms, wearing khaki. We guerrillas, some of them wear blue denims, and some don't have any.

Q Do you know how many shots were fired in their guns?

COLONEL HAUSE: Are all these questions material to the issue?

LIEUTENANT GORDON: In one way, yes. I would like to show the veracity of this witness.

COLONEL HAUSE: All right. Continue.

Q Do you know how many shots were carried in the magazine of the Japanese soldiers' rifle?

A Yes, sir, I know.

Q How many?

A There are, fully loaded, five rounds.

Q When Tabuo came to your house on September 26 with his four companions --

A Yes, sir.

Q -- did he take you out of the house?

A No, I was out of the house already.

Q You were standing outside the house?

A Yes, sir.

Q With the child in your arms?

A Yes, sir.

Q And did I understand you to say you ran away?

A I escaped away, sir, run away.

Q You run away?

A Yes, sir.

Q With the child in your arms?

A No. First I dropped my child when I jump already, when

I jump the cliff because if I brought my child it would be killed, maybe.

Q So you put the child down?

A I dropped the child.

Q Dropped?

A Dropped, just like dropping a stone.

Q Was your wife there?

A Yes, sir.

Q Do you have any other children?

A Three of them.

Q Then, I mean; not now. Did you have any other children then?

A Then?

Q Then. On September 26, 1944.

A May I beg your pardon, sir?

Q Did you have any other children besides this one which you were carrying?

A Yes, sir.

Q How many?

A There were three, and one I carry. There were three in all, including the one I carry.

Q Where were the other two?

A The other two were upstairs.

Q Upstairs?

A Upstairs.

Q Weren't you afraid that when you escaped and left your children and your wife behind, that Tabuo and his four companions would injure them, maybe kill them?

A I think of a way. If I escape and be alive, my family

has a chance to live a little bit longer, because I think that my family could run away, could escape, because Tabuo lived alone in our house.

Q Don't you think that Tabuo and his four companions would be very angry if you escaped and therefore would revenge themselves on your wife and children?

A May I beg your pardon, sir?

CAPTAIN FISHMAN: Sir, I object to this line of questioning. I don't see how it has any bearing on his veracity.

COLONEL HAUSE: Objection sustained.

Q You don't like the Japanese, do you?

A Never did, sir.

Q Never did?

A Yes, sir.

Q Do you know the names of any other Japanese who are in Toledo in 1944?

A I know a Japanese civilian, a civilian Japanese.

Q Was he there before the war started?

A Before the war started?

Q Yes.

A I don't think so, sir.

Q You used to see the Japanese soldiers around quite a bit in Toledo in 1944. There were other Japanese soldiers in Toledo in 1944, weren't there?

A Were there Japanese? Yes, sir. There were Japanese.

Q Did you see them very often, the other Japanese soldiers?

A May I beg your pardon, sir?

Q Did you see the other Japanese soldiers who were in Toledo in 1944 very often?

A Often?

Q On numerous occasions.

A Yes, sir, because I was -- my house is near the sentry.

Q Did you get to know any of the Japanese soldiers?

A I don't know, sir.

Q You didn't get to know the names of any of the Japanese soldiers?

A I only know their faces but not their names.

Q How many Japanese soldiers were in town when Tabuo was in town?

A I don't know exactly the amount, sir. There were many.

Q Well, you seem to be a very exact man, putting things down in your book. Make an estimate.

A But it is not so very particular on my part to jot down the record the Japanese make.

Q As a soldier going out on patrol, if you saw an enemy soldier you would note the number, wouldn't you, of an enemy patrol if you were out on a patrol?

A May I beg your pardon, sir?

Q If as a soldier you went out on a patrol and saw an enemy patrol, would you not take note and see how many men were in that enemy patrol?

A Not exactly a note, at least calculate only.

Q That's right. I want you to calculate now how many soldiers were in town at the same time that Tabuo was there in the month of September 1944.

A 1944 it was about a company.

Q, How many in the company?

A Well, I don't know their table of organization.

Q Calculate.

A The table of their organization?

Q Calculate.

A It must be around 120 or 110.

Q 110 or 120. Did any more soldiers come into Toledo in the following months?

A The following months of what?

Q Of 1944 in October or November.

A I don't think so, sir; I was not there already.

Q Were you not there?

A On September 26 I was not there already in the town of Toledo.

Q But you came back to the town of Toledo on visits after September 26.

A After September 26 I did not visit any more there, sir.

Q You never came back to the town of Toledo?

A When?

Q After September 26, 1944.

A I came back in the year 1945 already, 1944.

Q What year?

A In the year 1945, already.

Q What month in 1945 did you come back?

A That was when I invited my friend to the anniversary of my dead cousin.

Q So you stayed away from the town of Toledo for one year?

A Not exactly one year, sir.

Q That is what?

A Not exactly one year. Yes, about one year, sir.

Q Do you know when the Japanese soldiers left Toledo?

A No, sir.

Q Did anybody ever come up to the mountains and tell you?

A Nobody, sir.

COLONEL HAUSE: Is that a material question? You are wandering off.

LIEUTENANT GORDON: No further questions.

COLONEL HAUSE: Questions by the Prosecution?

CAPTAIN FISHMAN: Nothing further.

COLONEL HAUSE: Any questions by members of the Commission?

There seem to be no further questions. The witness will be excused.

The Commission will recess until 1330 hours.

(At 1120 hours the Commission recessed until 1330 hours, at which time the proceedings were as follows:)

COL. HAUSE: The Commission will be in session.

CAPT. FISHMAN: Sir, all five members of the Commission, the Accused, Defense Counsel and Prosecution are present.

JOSE BAHINA

called as a witness by the Prosecution, being first sworn testified as follows in English.

DIRECT EXAMINATION

BY LT. CASTILLO:

Q What is your name?

A My name is Jose Bahina.

Q How old are you?

A I am thirty years old.

Q What is your occupation?

A Now I am foreman in charge of construction of Toledo electoral precinct.

Q Are you a Filipino citizen?

A Yes, I am a Filipino citizen.

Q Where is your present address?

A My present address in the City of Manila is in the headquarters commandant Base X OCCW civilian in transient camp.

Q Is that your permanent address at the present time?

A That is my temporary address.

Q What is your permanent address?

A My permanent address in Toledo, Cebu.

Q Do you know the Accused in this case?

A Yes, I know him.

Q Is he now in the court?

A (Pointing) There in the court.

LT. CASTILLO; I state for the record that the witness pointed at the Accused.

Q Where were you in 1944?

A I was in Toledo, Cebu.

Q Did you see the Accused in Toledo, Cebu during that year?

A Yes, I have seen him.

Q Where did you see him for the first time?

A I saw him for the first time in Toledo, Cebu.

Q When?

A That was in the middle of September.

Q When was the last time that you saw the Accused at Toledo, Cebu?

A My last time I saw him was on November 2nd 1944.

Q Between the time you first saw the Accused and October 1944 and the time you saw him last on November 2nd 1944, did you ever see him?

A Sometimes, I often see him.

Q About how often did you see him between those times?

A Sometimes twice a week, and not so often, but I always often see him.

Q What was your work at Toledo, Cebu during that time?

A I was an employee of a certain Japanese firm in Toledo, Daido Boike Kaisha.

Q Where did you used to see him between the middle part of September 1944 up to November 2nd 1944 when you last saw him?

A I saw him in Toledo, Cebu.

Q Where did you see him the last time?

A The last time I saw him, that was on November 2nd 1944.

Q Where?

A In a certain house where he was drinking tuba; I think that was around five-thirty or six o'clock in the afternoon.

Q Was that in Toledo?

A In Toledo.

LT. CASTILLO: That is all.

COL. HAUSE: Questions by the Defense?

CROSS EXAMINATION

BY LIEUTENANT GORDON:

Q Whose house was it that you saw Tabuo in on the 2nd of November 1944 at about 5:30 or 6:00 p.m.?

A That house doesn't belong to anybody but it's a frequent place for every civilian drinking tuba; that's considered as where we can drink tuba.

Q Do I understand you to say it did not belong to anyone?

A I beg your pardon?

Q It did not belong to anyone, the house?

A Well, I don't know the owner of the house.

Q Was the owner of the house there that afternoon?

A (Through interpreter) No.

Q Who else was there with Tabuo?

A There were groups of men.

Q Were they Japanese soldiers?

A There were Japanese soldiers and there were civilians, too.

Q Did you know any of the civilians there?

A Well, I don't know.

Q Do you know Alberto Caballes?

A I know him.

Q Do you know Sebastian Libre?

A I know him.

Q Do you know a man by the name of Syson?

A I know Syson.

Q You know him?

A I know him.

Q Did you know Remedio Delica?

A I don't know him.

Q Did you know any other Japanese soldiers in 1944 besides Tabuo?

A Well, there were plenty of Japanese soldiers over there but Tabuo was very popular among the civilians and that's the time that I have known him.

Q Did you know the names of any other Japanese soldiers at that time?

A I know of a certain Japanese called Kawahara.

Q How were you treated by the Japanese when they were there?

A Well, to us Filipinos it's humiliating to relate everything, the treatment the Japanese gave to us. We were -- as if we were under their iron grip.

Q And although Tabuo treated you kindly when he was in Toledo, you didn't like him because you felt you were under his iron grip, is that so?

A Well, the other part of my feeling seems to court the favor in the humiliation of the people; but in inner feeling we don't give anything, we do not give any weight.

LIEUTENANT GORDON: Will the reporter read the last answer back?

(The last answer was read by the reporter.)

Q Do I understand you to say that all the Filipinos in Toledo disliked the Japanese because they felt that they were humiliated and under their iron grip?

LIEUTENANT GORDON: Perhaps it might be better if the interpreter gave that.

A (Through interpreter) Yes, I do.

LIEUTENANT GORDON: That's all.

CAPTAIN FISHMAN: Nothing further, sir.

COLONEL HAUSE: Questions by members of the Commission?

EXAMINATION BY THE COMMISSION

BY COLONEL HAUSE:

Q Did you ever talk to Tabuo?

A I talked to him once.

Q What language did you speak?

A (Through interpreter) He just said good morning in action, not by words, or not by any language.

Q Does Tabuo speak Visayan?

A Tabuo spoke with me in mixed language, mixture of Englisn and Visayan dialect.

COLONEL HAUSE: No further questions.

The witness will be excused.

MANUEL BAHINA

called as a witness by the Prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

BY CAPTAIN FISHMAN:

Q What is your name?

A My name is Manuel Bahina.

Q How old are you?

A I am 23 years old.

Q What is your present occupation?

A My present occupation is Secretary of the Nationalista Party in Toledo.

Q Are you a Filipino citizen?

A Yes, I am a Filipino citizen.

Q Where are you living now?

A I am living in Toledo.

Q Where did you live in 1944?

A I lived in Toledo.

Q Do you know the Accused in this case?

A I know him.

Q What is his name?

A His name is Tabuo Chikanori.

Q Do you see him in this room?

A Yes, I saw him.

Q Will you point to him?

A He is there (pointing).

CAPTAIN FISHMAN: I state for the record that the witness pointed toward the Accused.

Q When was the first time that you saw Tabuo?

A I first saw Tabuo in May 1944.

Q Where was he?

A He was there in our club.

Q Where was that?

A In Toledo, Cebu.

Q What was he doing there?

A He forced himself to show the Japanese dance.

Q What kind of a club was it?

A It was a religious club.

Q What kind of a club was it?

A It was a religious club.

Q How long was he there?

A He was there for about one or two hours that night.

Q Were you there all during the time he was there?

A I was there all the time.

Q Did you see him there all during that time?

A I saw him there all during that time.

Q How close to him were you?

A I beg your pardon?

Q How close to him were you during the course of that time?
How many feet away from him?

A It was somewhat about ten feet away from him.

Q Did you hear him say anything at that time?

A I heard him say that he is going to dance.

Q Did he say what his name was?

A He also introduced himself by giving an envelope wherein his name was written.

Q What name was written on that envelope?

A On that envelope was written his name only "Tabuo".

Q When did you see him next?

A I saw him in Balamban Garrison.

Q When was that?

A It was in August.

Q Of what year?

A 1944.

Q What was he doing when you saw him in Balamban?

A He was standing near the gate of the guard house.

Q Did you talk to him?

A He talked to me first.

Q What did he say to you?

A "Give me a cigarette."

Q What did you say?

A I said, "I have none".

Q What did he say then?

A He said that he came from Cebu and that due to lack of transportation he boarded the banca ' in order to return to Balamban Garrison.

Q In what language were you and he talking at that time?

A We talked in what we call bamboo Visayan,— slang Visayan.

Q Was anything else said at that time by him?

A After'that we said nothing.

Q Did you ever see him after that in Toledo?

A I saw him by the middle part of September in Toledo 1944.

Q What was he doing in Toledo in the middle part of September 1944?

A He was with the Balamban Japanese Army force before he evacuated to that place.

Q Did he come to Toledo from Balamban with other Japanese soldiers?

A Yes, he came with other Japanese soldiers.

Q When did he come to Toledo with other Japanese soldiers from Balamban?

A It was on or about the middle part of September 1944.

Q How do you know that it was in the month of September 1944 that you saw him in Toledo?

A It must be on this day because the first American bombing of the City of Cebu occurred on that day.

Q Did you see him after the middle of September 1944 in Toledo?

A I saw him.

Q How often?

A I saw him the first week of his coming there about daily.

Q And after that how often did you see him in Toledo?

A I saw him once or twice a week.

Q Where?

A In Toledo.

Q Didyou see Tabuo in Toledo during October 1944?

A I saw him there in October.

Q Of 1944?.

A 1944, yes.

Q When was the last time that you saw Tabuo in Toledo?

A I saw him about five or six o'clock on November 2nd 1944.

Q Where was it that you saw him on that day?

A He was standing on the sidewalk of the newly occupied garrison.

Q What was he doing?

A He was there clamoring for tuba.

Q How do you remember that it was November 2nd 1944 that you saw him shouting for tuba in Toledo?

A I remember it was November 2nd because that is All-Souls Day.

Q Was Tabuo well known among the people of Toledo?

A He is well known among the populace of Toledo.

Q Why was he well known?

A He introduces himself as "Tabuo the doctor".

Q Did he used to give any medical treatment to the people of Toledo?

A He used to give medical treatment, especially treatment for ulcers.

Q Do you know when the Japanese left Toledo?

A The Japanese left on or about November the 4th.

Q How do you remember that that was the time when they left?

A It was the time that they left, because the manager of the Daido Boike Kaisha told me to type something ; I think it was the inventory on that day.

Q How do you associate the typing of that inventory with the departure of the Japanese ?

A That inventory was the closing date of all the books of Daido Boike Kaisha and the manager told me that the garrison soldiers would be leaving on that day or on the 5th.

CAPT. FISHMAN: That is all.

CROSS EXAMINATION

BY LT. GORDON:

Q Are you any relation to Jose Bahina?

A He is my brother.

Q Do I understand that in 1944 you worked for the Daido Company?

A Yes.

Q You worked there, too?

A Yes.

Q Did your brother work there, too ?

A He worked there.

Q And now you are secretary to the Nationalistic Party?

A Yes.

Q Who is governing the town of Toledo now?

A Mr. Felicisimo Libre.

Q What party is he representing?

A Nationalistic Party.

Q Does he know you are here today? Does the mayor know you are here today?

A He knows that we are here today.

Q Does anybody else in Toledo know that you are here?

CAPT. FISHMAN: Sir, I fail to see the relevancy of that question.

LT. GORDON: This is cross examination, sir; I am trying to show that this is a group of people gotten together to try to prove that Tabuo was in town at the time this incident happened.

CAPT. FISHMAN: I will withdraw my objection.

COL. HAUSE: Proceed.

LT. GORDON: What was the last question?

WHEREUPON, the last question was read by the Reporter.

A I think a few of them may know.

Q How many would you say?

A The surest I can give is my family.

Q Anybody else besides your family?

A There may be a few.

Q Do you know Sebastian Libre?

A Yes, I know him.

Q How well do you know him; how often do you see him? Do you go to his house? Is he a member of your family?

A I know him, but I do not go to his house. I go to Libre's house. I met him often.

Q Does he come to your house?

A He does not come to my house.

Q Do you know the Chief of Police at Toledo?

A I know the Chief of Police at Toledo.

Q What is his name?

A His name is Macapobre.

Q Who is Alberto Caballes?

A Alberto Caballes is my townmate.

Q Is he Chief of Police?

A I think he is not the Chief of Police now.

Q When was he Chief of Police?

A I do not know.

Q Was he Chief of Police when the Japanese were there in 1944?

A I do not know.

Q You say that All-Souls Day in 1944 fell on the 2nd of November; is that right?

A That is right.

Q When did it fall in the year 1945?

A I beg your pardon?

Q When was All-Souls Day in the year 1945?

A All-Souls Day falls on November 2nd every year.

Q When does All-Saints Day come?

A All-Saints Day comes on November 1st of every year.

Q Did you celebrate All-Saints Day in 1944?

A We tried to celebrate.

Q But —

A But due to the fact that the Japanese forces were stationed in Toledo.

Q Did you celebrate All-Souls Day in that year?

A We tried to celebrate a little, only a little.

Q Well, I understand that when you first met Tabuo you were at a dance, a religious-club dance, is that right?

A We don't dance on those days.

Q No, but when you first met Tabuo --

A Yes.

Q -- you met him at a dance of your religious club.

A It wasn't a dance. He forced himself to dance.

Q Well, what was the gathering about, then?

A It was more or less a religious gathering with few intermissions of amateur shows.

Q Was there any band there or orchestra?

A There wasn't no band.

Q Well, how can you dance without a band?

A He danced there. I said he forced himself to dance to show that he knows how to dance his Japanese dance.

Q Did you suffer any hardships while the Japanese were in Toledo?

A I beg your pardon, sir?

Q Did you suffer any hardships while the Japanese were in Toledo?

A We suffer hardships.

Q Do you like the Japanese?

A Of course I don't like them.

Q Would you say that you hate them?

A I don't mean to say that I hate them.

Q What is your feeling toward the Japanese?

A They are hard people to deal with.

Q And you don't like them?

A If you say "like" as to say, "I love," then I say I don't like them.

Q What is that, again?

A If you mean that "like" is the synonym of "love," then I say I do not like them.

Q Do you accept them as friends, comrades, companions?

A For us they were only conquerors and strangers.

Q And you were glad when they left?

A I can't say so.

Q Well, weren't you happy when the Japs withdrew? Weren't you pleased that the Japs left Toledo?

A Of course we were pleased.

Q They committed a great number of atrocities in Toledo, didn't they?

A Yes, they did.

Q Did they kill any of your friends?

A I only know that they killed my friends after they left.

Q After they left?

A Yes.

Q And you would like to see them punished for that, wouldn't you?

A If they really committed the crime, I think justice will take care of that.

LIEUTENANT GORDON: That's all.

CAPTAIN FISHMAN: Nothing further.

COLONEL HAUSE: Questions by members of the Commission?

There appear to be no further questions. The witness will be excused.

CAPTAIN FISHMAN: I have nothing further, sir.

COLONEL HAUSE: Has the Defense anything further to offer?

LIEUTENANT GORDON: The Defense has nothing further to offer.

COLONEL HAUSE: The Defense rests?

LIEUTENANT GORDON: The Defense rests.

COLONEL HAUSE: Prosecution rests?

CAPTAIN FISHMAN: Prosecution rests. Sir, I would like to request a recess to see the Commission in chambers for a few minutes.

COLONEL HAUSE: All right.

LIEUTENANT GORDON: As for me, sir, I would like to request a continuance until 1330 tomorrow to prepare for final argument.

COLONEL HAUSE: At that time will you be prepared to present your final argument?

LIEUTENANT GORDON: I will, sir.

COLONEL HAUSE: Will the Prosecution?

CAPTAIN FISHMAN: That will be satisfactory, sir.

COLONEL HAUSE: About how much time will you require?

LIEUTENANT GORDON: No more than thirty to forty-five minutes, sir, if that much.

CAPTAIN FISHMAN: I think I would like a little longer, sir, perhaps an hour, an hour and a half.

COLONEL HAUSE: At this time the Commission will recess until 1330 tomorrow afternoon, at which time closing arguments will be heard.

(The trial was adjourned at 1415 hours, 4 April 1946.)

BEFORE THE
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

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UNITED STATES OF AMERICA

vs

CHIKANORI TABUO

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PUBLIC TRIAL

VOLUME IV

PAGES 224 To 245

MANILA, P.I.

DATE 5 April 1946

COPY NO. 5

AUTHENTICATION

THIS CERTIFIES that this Volume is a part of the Proceedings of the Military Commission appointed by Letter Order, AG 000.5 (12 Feb 46) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 12 February 1946, Subj: Trial of Chikanori Tabuo; 1st Indorsement to basic letter, AG 000.5 (12 Feb 46) LS General Headquarters, United States Army Forces, Pacific, dated 12 February 1946; par. 2 of Special Order No. 76, Headquarters, United States Army Forces Western Pacific, dated 1 April 1946; and letter dated 1 April 1946, Subj: Summoning and Swearing Witnesses for Tabuo's Trial, in the trial of the case of the United States of America v. Chikanori Tabuo.

Dated 6 April 1946.

Francis A. Hause

FRANCIS A. HAUSE
Colonel, CAC, USA
President of Commission

BEFORE THE
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces,
Western Pacific

* * * * * * * * * * * * * *
UNITED STATES OF AMERICA
*
vs
*
CHIKANORI TABUO
* * * * * * * * * * * * * *

PUBLIC TRIAL

Court No. 1
High Commissioner's Residence
Manila, P.I.
5 April 1946

Met, pursuant to adjournment, at 1330 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL FRANCIS A. HAUSE, CAC, PRES. & LAW MEMBER
LIEUTENANT COLONEL THOMAS H. ALLEN, INF (Armd)
LIEUTENANT COLONEL STARLEY N. BOYKIN, JR., INF.
CAPTAIN WILLIAM O. LUTZ, INF
CAPTAIN GLENN W. HENDRICKS, FA

APPEARANCES:

FOR THE PROSECUTION:

CAPTAIN ABRAHAM FISHMAN, JAGD, Chief Prosecutor
1st LIEUTENANT PRUDENCIO V. CASTILLO, JAGD

FOR THE DEFENSE:

1st LIEUTENANT IVAN H. GORDON, TC

OFFICIAL INTERPRETERS FOR THE COMMISSION:

VISAYAN:

FILOMENA ZOSA
JOSE BATUCAN
PRAXEDIO VILLALUZ

JAPANESE:
2nd LIEUTENANT RAYMOND NIMURA
T/3 GEORGE S. BABA
T/4 GEORGE W. USHIJIMA

OFFICIAL REPORTERS FOR THE COMMISSION:

William E. Rice
Arnold Cohen

I N D E X

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P R O C E E D I N G S

The Commission convened, pursuant to adjournment, at 1330 hours in Court No. 1, 5 April 1946, High Commissioner's Residence, Manila, P.I.

COL. HAUSE: The Commission will be in session.

CAPT. FISHMAN: Sir, all five members of the Commission are present, the Accused, Defense Counsel and Prosecution are present. I should like to recall one of the Prosecution witnesses to ask him about two or three questions.

COL. HAUSE: Proceed.

WHEREUPON, Sebastian Libre, a witness recalled by the Prosecution, being first sworn testified as follows through Interpreters Batucan and Villaluz.

DIRECT EXAMINATION

BY CAPT. FISHMAN:

Q What is your name?

A Sebastian Libre.

Q Are you the same Sebastian Libre who testified earlier in this case?

A Yes, sir.

Q When you saw Remedio Delica on November 2nd 1944 at and before the time he was killed by Tabuo, did Remedio Delica have any arms or weapons with him?

A I saw him with no arms, only the Japanese had arms.

Q Did Remedio Delica resist or struggle with the Japanese in any way at that time?

A No sir, he didn't resist because his two arms and two hands were tied up by the Japanese. He didn't show sign of any resistance

to his captors.

CAPT. FISHMAN: That is all.

LT. GORDON: No questions.

EXAMINATION BY THE COMMISSION

BY COL. HAUSE:

Q When this man was stabbed with a bayonet, was the bayonet fixed to a rifle or not?

A No sir, the bayonet was not fixed to the gun, but it was placed at the side of the Japanese soldier.

COL. HAUSE: No further questions. The witness is excused.

CAPT. FISHMAN: That is all the Prosecution has. The Prosecution rests.

COL. HAUSE: At this time the Commission will hear the closing statement of the Defense.

LT. GORDON: If the Commission please, I should like to say a few words in summation of this case. The case has not been a long one. There has only been one incident, and the evidence has been quite clear; in fact, it has been so clear that at one point the remark was made there was a great conflict in evidence on the Prosecution's side and the Defense's side. I was going to talk about this case and talk about the conflict, but when I came to court today and before the Commission convened, Tabuo handed me this letter and I felt anything I could say would be very futile, and that if I read his words, it would be telling the truth of the case as it was tried before you. It is addressed to me as Defense Counsel.

"Lt. Gordon,
Defence Council.

Dear sir,

Totally ignorant of the events alleged in the charges brought against me, I have faced this Military Commission to be tried for my life.

In three days I have heard many prosecution witnesses and have myself taken the Stand in my defense.

You have done your best, I know, and any words I might say or write could not in any measure equal the deep appreciation I have in my heart.

I have said that I was totally ignorant of the events alleged in the charges. But having heard the testimony offered by the prosecution, I am today convinced that the events in the charges must be true.

That the deed was done must be the fact. It has been proven so. But who committed this crime?

Have you ever noticed how difficult it is to fix a face in your memory? I wonder if those Filipinos who have testified that it was I who committed this deed could not have been mistaken? Wasn't it a Japanese they saw and not Chikanori Tabuo?

These Filipinos have been done grevious wrong. It was a Japanese soldier who did this wrong. Tabuo — it sounds almost a Filipino name and perhaps it was easy for the Filipino to remember. And too they had seen me so often giving them medicine, treating their hurts and illnesses, helping make their lives even a bit more easier.

They called me Doctor Tabuo, and I am not even a medical officer. They came to me and I did all I could. These people remembered me. They remembered a short Japanese by the name of TABUO.

When they were asked who had done the killing, they could not say — but they knew the name TABUO.

What real difference did it make, TABUO would never come back, and anyway should not one Japanese pay for this Japanese crime against humanity, even if it might not have been the one who actually committed the deed?

To punish a perpetrator for his crime —this is just.
To seek revenge —This too may be just. But to try an innocent person and possibly convict him for crimes he has no knowledge of — This cannot be just.

In closing, I would simply say, thank you for your diligence, kindness and good heart. I wish too, if possible, that what I have written here may become a part of the record of this trial — to be introduced as a separate statement or in your closing argument.

Respectfully yours,

/t/ Chikanori Tabuo. "

/s/ Chikanori Tabuo

Sirs, Tabuo has presented evidence of truth and strength against the woven set of fiction, and it is all here in the record. Study this record when you deliberate. Look at it by both the Prosecution's evidence and the Defense's evidence, and I think you will find the Prosecution has failed to prove the guilt of the Accused beyond a reasonable doubt and your verdict should be that Tabuo is innocent of the Charge and Specification. The world will little note nor long remember what we say here, but it will never forget what we do here, and for that reason, I think you must conclude this is an innocent man, even though he is our enemy.

CAPTAIN FISHMAN: The charge in this case is that the Accused, a member of the Japanese Army, at Toledo, Cebu, on 2 November 1944, willfully and unlawfully killed Remedio Delica, a Filipino civilian, who was then unarmed and a prisoner of the Japanese by bayoneting him to death.

The proof of the killing by Tabuo is this: Two eye-witnesses, Alberto Caballes and Sebastian Libre, testified that on 2 November 1944 they personally saw Tabuo and two other Japanese soldiers lead Remedio Delica to a Talisay tree near the seashore in Toledo; that Remedio was tied at the neck and his hands were tied behind his back; that Tabuo and his two companions tied and hung Remedio from the tree; that then Tabuo thrust his bayonet into Remedio's abdomen three times. Remedio slumped. The Japanese released the ropes. Remedio fell to the ground.

The proof of the death is this: Caballes testified that when Tabuo and the other Japanese went away Caballes came up, examined the body, and found it to be dead. It did not move; it did not breathe.

Remedio's mother, Aurelia Delica, testified that two or three days later, having been informed of the death of her son, found the body near the Talisay tree just about where the testimony shows that Remedio was killed; examined the body; recognized it as her son Remedio; saw three bayonet wounds in his back -- apparently the bayonet had gone completely through the body -- and she buried the body at the spot.

Other elements of the Charge are proved as follows: Tabuo admitted, as several witnesses testified, that he was a member of the Japanese Army at the time. The

Commission will take judicial notice that on 2 November 1944 the United States was at war with Japan.

Libre has testified that at the time of the killing Remedio was unarmed and was a prisoner of the Japanese; that there was no combat or fighting between them. That is likewise apparent from the testimony of Caballes, when he stated that Remedio was tied and the Japanese were leading him.

Remedio's mother testified that Remedio was a civilian, not a soldier or a guerrilla, and this was borne out by other witnesses in varying degrees.

Remedio was a Filipino.

That the killing was unlawful was admitted by Tabuo when he testified that he never received any order or authorization to kill any Filipino. Since the killing did not occur in combat or self-defense, it could be lawful only if ordered or authorized by some proper court or court-martial. Tabuo admitted that no one had ever given him any such order or authorization; in fact, he said it would be unlawful for his company commander to authorize him to kill a Filipino.

The defense is that Tabuo left Toledo on 2 September 1944 to go to Cebu City for anti-tank training; that he never returned to Toledo after 2 September 1944; that, therefore, he was not in Toledo at the time of the killing and could not have been the one who committed the killing. The witnesses who testified for Tabuo are Lieutenant Kawahara, his company commander, Lieutenant Kimura, the medical officer at the dispensary at Guadalupe where Tabuo claimed that he was on

November 2, the date of the killing.

Lieutenant Kimura was a medical officer of Tabuo's battalion. The other witness was Sergeant Morita, also in the battalion who worked in the office of the dispensary. The story of these witnesses for Tabuo, as well as his own story, contained crucial contradictions and discrepancies and were, in a number of respects, fantastic and incredible.

Lieutenant Kawahara and Sergeant Morita were shown to have testified in court on essential matters to the direct opposite of what they previously stated in affidavits.

The disproof of Tabuo's alibi: Four witnesses, in addition to Caballes, Libre, and Mrs. Delica, testified that they saw Tabuo on numerous occasions in Toledo after 2 September 1944, the date on which Tabuo testified that he left Toledo and never returned. These witnesses saw Tabuo frequently in Toledo after 2 September 1944. They saw him in September; they saw him at various times in October; and witnesses testified that they saw him there as late as 4 November 1944.

Four November is the date when the witnesses testified the Jap garrison left Toledo to go to Cebu City. These four witnesses were Pastor, Syson, and the two Bahina brothers. Their stories were reasonable and consistent. They knew Tabuo well. He was not a stranger to them. They had seen him many times. He was well known in town. They were positive in their identification. They knew Tabuo's name because he apparently took pride in introducing himself as Dr. Tabuo. The civilians in the town all knew him as Dr. Tabuo and they called that name out when they saw him.

He was apparently the outstanding Japanese personality in Toledo. He advertised himself by his name and by his deeds, and that is why the Filipinos knew Tabuo better than they knew any other Japanese in Toledo.

Alberto Caballes testified that he saw the killing from his hut. The hut had no walls. There were no obstructions. He could see everything that went on. The hut was only fifty meters away from the tree at which Remedio was killed. It was about four o'clock in the afternoon. The sun was shining. The sun was on his left. It was not shining in his eyes and did not obstruct his vision. He recognized Tabuo and Remedio Delica, the victim. There were two Japs with Tabuo who helped tie Remedio to the tree. He testified that Tabuo bayoneted Remedio three times in the abdomen and that the Japs then cut Remedio down and ran away. Caballes came up, examined the body, saw that it was dead. Caballes testified that the execution took place at a Magtalisay tree; that there were also banana plants in the vicinity; that he did not see the other eyewitness, Sebastian Libre, who was behind a banana tree. The reason is that he did not look to see what if anything was behind the banana tree.

There were stones piled up in the vicinity of the Talisay tree and there were elevations in the ground, behind which stones and elevations the five other Japanese soldiers that Libre saw could well have been hidden from the sight of Caballes.

The incident took about half an hour, Caballes testified. He was observing it all the time. Caballes knew Tabuo well.

He had seen Him often in September and October 1944. Sometimes Tabuo had come to Caballes' house and had talked to him in Visayan. He remembers the date, November 2, because that was All Souls' Day and because about two days later the Japanese departed from Toledo. The departure of the Japanese from Toledo, in itself, would be a significant enough event to fix the date in Caballes' memory, without the fact that the killing occurred on a holiday.

Tabuo was well known in Toledo as a medicine man, giving treatment.

To corroborate, to a certain extent, Caballes' testimony and identification, Caballes testified that a Filipino named Cristobal Lara, apparently a collaborator who lived with the Japanese garrison, told Caballes a couple of days after the killing that Lara had seen Remedio Delica in the Japanese garrison; that the Japanese had arrested Remedio and were questioning him on suspicion that Remedio was a guerrilla; that Lara had seen the questioning and heard it, and that the one who was doing the questioning was Tabuo.

Caballes testified that neither he nor any member of his family were ill-treated or abused by any member of the Japanese, and there is no indication that he had any sufficient motive to lie about the incident or the identification.

Sebastian Libre saw the same incident from behind a banana tree, which was 51 feet away from the Talisay tree. He described the killing substantially the same as Caballes described it. Libre saw Caballes in the salt-hut. Caballes did not see Libre because Libre was behind the banana tree. Libre saw five other Japanese soldiers leading Remedio towards the vicinity, but those five other Japanese soldiers did not

go up to the tree with Tabuo and the other two; they concealed themselves, and that is why Caballes did not see those five other Japanese soldiers.

Libre testified that he knew Remedio, recognized him; that he knew Tabuo, that he had seen him often. He had seen Tabuo often because Tabuo had come to his house to obtain tuba. Tuba was apparently a Filipino beverage that was quite popular with the Japanese. Libre was a tuba gatherer and was well known as such, and Tabuo had come frequently to his house to obtain tuba, sometimes paying for it and sometimes not paying for it. When Tabuo failed to pay for it, Libre said nothing because he was afraid of the Japanese.

Libre saw Tabuo leaving Toledo on November 4, 1944 with the rest of the Japanese garrison. Libre talked to Tabuo on that day. Tabuo told Libre that Tabuo was going to Cebu City. Their conversation was held in Visayan.

Tabuo was well known in Toledo as a medicine man. Libre saw Tabuo in the month of September and October. The extent of the acquaintance between Tabuo and Libre is such that there can be no doubt of the identification by Libre.

The circumstances of the relationship between Tabuo and Libre make it all the more evident that Libre was positive, and rightfully positive, in his identification.

Aurelia Delica, the mother of Remedio Delica, the victim, testified that her son, Remedio, left his home on October 28, 1944. About that time or shortly thereafter she was informed that her son had been arrested by the Japanese. He was imprisoned in the garrison at Toledo; and further, that it was Tabuo who had arrested her son.

About November 4 or 5 she saw her son's dead body on the beach near where the killing occurred. She recognized the body, recognized the face and clothes. She saw the same three bayonet wounds that the eyewitnesses had testified to. She buried the body.

Remedio was at home all the time before he was arrested. He never went out on expeditions. He was a civilian.

Tabuo testified that he finished anti-tank training on October 5; that he entered the dispensary on October 26, an interval of 21 days. The distance between Toledo and Cebu City was 42 kilometers and the road between them was an improved road.

The reason that Tabuo gave as to why he did not return to his company was that the battalion had no vehicles. This was the headquarters of the battalion in Cebu City. It had no vehicles. There are many vehicles in Cebu City, but nevertheless his battalion had none.

Tabuo was asked this question: "Were you confined to your bed all this time?" Answer: "Yes, I was not able to walk for over one month."

A short time later, in the course of cross examination, he testified, on the contrary, that he was able to walk within two or three days with the aid of a cane.

Tabuo testified that he had never seen Caballes or Libre before; that he had never gotten his tuba from Libre. He testified that he was a squad leader in an infantry company, that he had seven men under him.

The Commission will recall that Libre testified that there were eight Japanese leading Remedio to his death, Tabuo and seven others. That is consistent with Tabuo's statement

that he had seven men under him. Apparently he took his squad.

Tabuo testified that about 20 to 30 men went with him to Cebu City on September 2, some of them from his own company. But he said that he remembered the name of only one of these men. He testified that he did not see Lieutenant Kimura at the dispensary until two or three days after he was admitted. Kimura himself, however, and the defendant's other witness, Morita, testified that Kimura admitted Tabuo and saw Tabuo the same day that Tabuo arrived at the dispensary.

Tabuo testified that he was in the dispensary sickroom from October 26 to the end of December; that there were 20 to 30 other patients in this same room. But from all the persons who passed in and out of that sickroom during that long period, he remembered the name of only one of them.

Tabuo testified that he saw Sergeant Morita every day while at the dispensary and that he saw Sergeant Morita at the dispensary until the latter part of December; specifically, December 28. Morita himself, however, testified that he left the dispensary in the middle of or late November.

Tabuo testified that he never killed a Filipino or a Filipino woman, a fact which is contradicted by Syson's testimony involving the incident in the mountains near Toledo when Syson escaped from Tabuo and Tabuo killed his cousin.

LIEUTENANT GORDON: I object to that, your Honor. That was, I think, stricken from the record as immaterial. It is immaterial to this Specification and Charge.

COLONEL HAUSE: That's right.

CAPTAIN FISHMAN: I don't remember that it was stricken but I have no objection to the court's disregarding that.

COLONEL HAUSE: It was ordered not to bring that case up and involve two cases.

CAPTAIN FISHMAN: Tabuo testified that he never had anything to do with guerrillas or persons suspected of being guerrillas. Syson, however, testified that Tabuo interrogated Syson for a long time about whether he was a guerrilla and that Syson, becoming frightened and anticipating that Tabuo was going to kill him on suspicion of being a guerrilla, escaped. That contradicts Tabuo's testimony that he never had anything to do with guerrillas or suspected guerrillas.

Tabuo's testimony in this respect is likewise contradicted by Cristobal Lara's report to Caballes that it was Tabuo who was questioning Remedio in the garrison shortly before November 2 when Remedio was executed.

It is likewise contradicted by Mrs. Delica's testimony, that she was informed that Tabuo had arrested her son. Tabuo testified that he never questioned a Filipino suspected of being a guerrilla or a spy. This is likewise contradicted by the testimony I mentioned. Tabuo made this interesting statement: "In the Japanese Army, soldiers and noncommissioned officers do not have the right to take men into custody and question them, or to question a Filipino suspected of being a guerrilla or a spy." I submit that that statement is incredible," that soldiers and noncommissioned officers do not have the right to take men into custody, men who are suspected of being guerrillas." He testified that he was on a security guard at Toledo, and that the only duties of a security guard are"to aid the Filipino people and to aid the suffering ". I am sure that is quite contrary to the experiences of all of us, and is likewise incredible. He testifies that the only words he knows in Visayan are the words for "good morning" and "good afternoon". Those are the only words that he knew. All of the Prosecution witnesses except Mrs. Delica, six witnesses, testified that they heard Tabuo talk in Visayan, saying various things in addition to those two words.

Lieutenant Kawahara was Tabuo's company commander. He testified that the company headquarters was transferred from Balamban to Toledo about the middle of September 1944, thereby confirming the recollection of the Prosecution's witnesses. Kawahara testified that he moved the company from Toledo to Cebu during the first part of November 1944, likewise corroborating the recollection of the Prosecution's witnesses that the Japanese moved from Toledo to Cebu on or about November 4th. Kawahara was apparently involved in some murders himself. He was asked whether he executed any

Filipinos in Toledo. First, he said he did, then he said he didn't. Then he was asked: "Are you sure that during that time no Filipinos were killed or executed by your unit?" He answered: "There were no executions." Question: "By anyone in your company? Not a single Filipino was executed at that time?" Answer: " We did not kill any Filipino at that time; not even one Filipino." However, in affidavits that he made in Japanese on 8 March 1946, he admitted that Filipinos were killed in Toledo under orders by members of his unit. He is obviously involved in a killing, thereby creating a motive for attempting to protect Tabuo.

The Official Interpreter, when the translation was questioned, stated very definitely that the question that he asked Kawahara included a word that could mean only "Filipinos", but did not mean "Filipino civilians". It could be interpreted only as "Filipinos", so there could have been no misunderstanding.

Kimura was the medical officer. He testified Tabuo was "unable to move" from his bed for the first fifteen days. Tabuo himself, however, testified that after the first two or three days he was able to walk around with the aid of a cane. Kimura testified he handled the admission of Tabuo to the dispensary November 1st. Tabuo himself, however, said he entered on October 26th, but did not see Kimura until two or three days later. Kimura testified he didn't know whether Tabuo entered the dispensary alone, or was accompanied to the dispensary by someone. He didn't remember seeing anyone bring Tabuo to the dispensary. In an affidavit, however, he was asked this question: "Who brought Tabuo to the dispensary?" Answer: "A soldier from his company." This answer was written in Kimura's own hand writing in Japanese. He tried to explain it on the ground he had made a mistake. He testified that Sergeant Morita,

Defense witness, was in the dispensary all during November and December until the latter part of December. That is the same story told by Tabuo, but Morita himself testified that he left the dispensary in the middle or end of November. Kimura testified he remembered when Tabuo entered and left the dispensary, but he did not remember when any other soldier entered or left the dispensary. Out of hundreds of patients he handled, he remembers the names only of Tabuo and one other patient, and he doesn't remember in connection with that other patient when he arrived or when he left. November 1st was a very memorable date to Kimura. he said, but he didn't remember the day of the week. Morita, Defense witness, testified that Tabuo came to the dispensary "around the end of October or the beginning of November". The words "around the beginning of November", are quite consistent with the possibility Tabuo came to the dispensary on or shortly after November 4th, when the Japanese left Toledo and came to Cebu. Morita testified Lieutenant Kimura was at the dispensary when Tabuo arrived. Kimura testified that he arrived on November 1st. Tabuo, however, testified that he arrived on October 26th. Morita testified that he left the dispensary in the middle or latter part of November, contrary to the testimony of Tabuo, and Kimura that Morita left the end of December, Tabuo testifying that he saw Morita at the dispensary until the end of December nearly every day. Morita testified in answer to this Question: "Did you speak to Tabuo at the POW Camp at Calamba?" Answer: "I have never spoken to him." However, he admitted that he was in the same camp with Tabuo at the Prisoner of War Camp, played games with him such as cards and Japanese chess. However, he said, "I have never spoken to him." Morita was asked this question: "How many times in all did you see

Tabuo in the dispensary at Guadalupe?" Answer: "About two or three times." But in an affidavit he made in Japanese on 7 March 1946 he was asked this question: " While you were at Guadalupe, how many times did you see Tabuo?" Answer: "I just saw him once."

The Prosecution offered four witness' proof after the eye-witnesses and the mother of the victim testified that Tabuo contrary to his testimony and the testimony of the witnesses was in fact in Toledo during October and November up to about the fourth. Fernandez testified he saw Tabuo in Toledo many times up to and including the 5th of November. He saw him in the market place giving medical treatment. Tabuo was well known as "Dr. Tabuo", and in fact Tabuo had treated the witness' own child three times and had cured it, and the witness was grateful for that. He remembers it was October, because that is when he came down from the mountains in response to the threat of the Japanese that all Filipinos who refused to come down from the mountains would be killed. Neither he nor any member of his family was abused by Tabuo. He had no motive for lying. On cross examination Pastor was asked this question: "When did you learn Tabuo had killed the person in Toledo?" Answer: "At the time Tabuo and his men left Toledo." Question: "Who told it to you?" Answer: "My neighbors told it to me." He found out, then, shortly after November 4th that Tabuo had killed Remedio. It is most unlikely that any conspiracy as suggested by the Defense Counsel yesterday was made as far back as November 4th or 5th 1944, a day or two after the Japanese left Toledo.

Syson testified that he saw Tabuo in Toledo twenty times between September 20 and September 26 1944. The first time was when he was riding on his bicycle carrying his child, and for that reason

failed to salute a sentry; Tabuo saw him fail to salute a sentry, stopped him and questioned him. He was frightened; that is why he remembers the date. He also remembers seeing Tabuo during those twenty days in Toledo acting as "medicine man". He also remembers seeing Tabuo September 26, 1944 when Tabuo came into his house in the mountains about eight kilometers from Toledo and questioned him about his being a guerrilla — questioning him in Visayan, a language which he says he only knows "good morning" and "good afternoon". Syson ran away and escaped, ran away about 60 or 70 yards, and from there could see Tabuo, and Tabuo remained in his sight another half hour while he was questioning the wife and cousin of Syson, and Syson saw Tabuo all that time. Syson remembers it was September 26 when he saw Tabuo in his home in the mountains because that was the date of the death of his cousin Pacita, and he commemorated the anniversary of that death September 26 1945, the following year.

Jose Bahena saw Tabuo often in Toledo between the middle of September 1944 and November 2nd 1944, sometimes twice a week. On November 2nd, the date of the killing, he saw him drinking tuba about 5:30 or six o'clock in the afternoon. Tabuo was very popular among the Filipinos. Manuel Bahena saw Tabuo in Toledo in May for a few hours in a club. He saw Tabuo in Balamban in August and talked with him in slang Visayan. He saw Tabuo in Toledo once or twice a week in September and October, and also saw him November 2nd about five or six o'clock in the afternoon clamoring for tuba. He remembers it because it was All-Souls Day, also because the Japanese left Toledo November 4th. He remembers that date because he was working for a Japanese firm, and he was required to make an inventory because the Japanese forces were leaving.

As to Tabuo's credibility, he is the Accused and his life is at stake. He had ample opportunity to get together with his witnesses before the trial and arrange an alibi. Kawahara was his company commander. Kawahara was with Tabuo in the mountains up to the time of his surrender and spoke to Tabuo at the prison camp both before and after the investigation. As a company commander in charge of Toledo, Kawahara is himself involved and perhaps responsible for any killings which occurred at Toledo. Kimura was in his battalion; he saw him in the mountains up to the time of the surrender. They talked together at Nichols Field Prisoner of War Camp after the investigation began. Morita was also in Tabuo's battalion. They were in the mountains atthe same time and they lived in the same tent at the Prisoner of War Camp at Lupow, both before and after the investigation. Tabuo was well known to the two eye witnesses to the killing. They were positive in their identification. They had good opportunity to observe and identify the perpetrator. Thefour other witnesses who testified that they saw Tabuo in Toledo in September and October and up to November 4th or 5th, had ample opportunity to observe and recognize him, and had good reason to remember him and the date.

The testimony of the Prosecution witnesses can be disregarded only on the theory they have conspired and perjured themselves, to hang an innocent man. Their stories hang together too well to think they were mistaken. Either they were telling the truth, or they have conspired to frame Tabuo. No evidence of any such conspiracy has been given. Not one Prosecution witness has been shaken in his story or has been shown to have made conflicting statements or to have given any unreasonable or implausible evidence

or conspiring with six other witnesses in fabricating a story to confiettan innocent man.

The age, background, religious faith and demeanor, and the fact that the witnesses with one exception come from different families, occupations and circumstances together with the reasonableness and consistency of their stories, after an unlimited testing by cross examination, compel the conclusion that the Prosecution witnesses are telling the truth. The Defense witnesses, on the other hand, have sufficient motives to lie to protect Tabuo and themselves. They had ample opportunity to arrange to try to save Tabuo. They were caught in lies, discrepancies and patent absurditios.

It is not necessary for the Commission to decide whether and when Tabuo left Toledo to go to Cebu City for anti tank training, or whether and when he was sick at the dispensary in Guadalupe. It is possible that parts of the Defense witness' stories are true. Tabuo may have taken anti tank training. He may have been sick. It is possible that the principal fabrication was in the dates involved. Thus, it is possible that Tabuo left Toledo for a short time in August or September, then returned to Toledo and stayed until November 4th and went to Cebu City with the rest of the company on November 4th. That is quite likely what happened, but it is not necessary for the Commission to decide these details. All that is necessary for the Commission to decide is whether Tabuo killed Remedio Delica at Toledo on November 2 1944.

Proof beyond a reasonable doubt does not mean proof to an absolute mathematical certainty or proof beyond any doubt. It means proof beyond a "reasonable "doubt. In almost any case there

is a theoretical possibility that the Accused may not in fact be guilty; such a possibility, however, is not a "reasonable doubt". You need not find that no doubt whatsoever exists; a doubt less than a "reasonable" doubt does not warrant acquital. You need not be mathematically and absolutely certain of the Accused's guilt before convicting him. Such a certainty is very difficult and rare and is not required. All that is required is to be convinced of the Accused's guilt beyond a reasonable doubt.

No mitigating circumstances have been claimed or shown in this case. The Accused's only defense is his alibi; therefore if the Commission finds the Accused guilty of the murder alleged, it is warranted in imposing the death penalty.

COL. HAUSE: The Commission will recess until 1500 this afternoon, at which time the findings will be announced.

WHEREUPON, at 1425 hours, the Commission recessed until 1507 hours, at which time the proceedings were as follows:

COLONEL HAUSE: The Commission will be in session.

CAPTAIN FISHMAN: Sir, all five members of the Commission, the Accused, Defense Counsel and Prosecution are present.

COLONEL HAUSE: The Accused and his Counsel will face the Commission.

(The Accused and his Counsel rise and face the Commission.)

COLONEL HAUSE: Chikanori Tabuo, this Commission, upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring in each finding of guilty, finds you:

Of the Specification: Guilty.

Of the Charge: Guilty.

Further, this Commission, upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring, sentences you to death by hanging.

COLONEL HAUSE: The interpreter will read the sentence to the Accused.

(Interpreter Baba does so.)

COLONEL HAUSE: This Commission stands adjourned until further notice.

(The Commission adjourned sine die at 1512 hours, 5 April 1946.)

COLONEL HAUSE: The Commission will be in session.

CAPTAIN FISHMAN: Sir, all five members of the Commission, the Accused, Defense Counsel and Prosecution are present.

COLONEL HAUSE: The Accused and his Counsel will face the Commission.

(The Accused and his Counsel rise and face the Commission.)

COLONEL HAUSE: Chikanori Tabuo, this Commission, upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring in each finding of guilty, finds you:

Of the Specification: Guilty.

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(Interpreter Baba does so.)

COLONEL HAUSE: This Commission stands adjourned until further notice.

(The Commission adjourned sine die at 1512 hours, 5 April 1946.)

AUTHENTICATION OF RECORD

The foregoing 245 pages, contained in Volumes I to IV, inclusive (together with Prosecution Exhibits 1, 2 and 2-A), are hereby certified as the Record of the Proceedings of the Military Commission appointed by Letter Order, AG000.5 (12 Feb 46) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 12 February 1946, Subj: Trial of Chikanori Tabuo; 1st Indorsement to basic letter, AG000.5 (12 Feb 46) LS General Headquarters, United States Army Forces, Pacific, dated 12 February 1946; par. 2 of Special Order No. 76, Headquarters, United States Army Forces Western Pacific, dated 1 April 1946; letter dated 1 April 1946, Subj: Summoning and Swearing Witnesses for Tabuo's Trial, in the trial of the case of the United States of America v. Chikanori Tabuo.

Dated 6 April 1946.

Francis A Hause

FRANCIS A. HAUSE
Colonel, CAC, USA
President of Commission

THIS ACKNOWLEDGES that the above-described Record was submitted to Defense Counsel prior to being certified by the President of the Commission.

Ivan H Gordon

IVAN H. GORDON
1st Lieutenant, TC
Chief Defense Counsel

Reports Control Symbol WDSCA-3

WAR CRIMES TRIAL STATUS REPORT

GHQ, SCAP, LEGAL SECTION, MANILA BRANCH
(Reporting Office)

2098

File Number P-70 Date of Report 3 January 1947

Title of Case U. S. A. vs. Kin Ryu RIN

PART A

1. Names and Nationalities of Accused:

Kin Ryu RIN - Japanese

2. Nature, Place and Date of Offense:

Murder of a Prisoner of War of the Armed Forces of the United States of America at Cabanatuan, Nueva Ecija Province, Philippine Islands, on or about 11 August 1944.

3. Names and Nationalities of Victims:

Robert Huffcutt - American

4. Probable Place and Date of Trial:

High Commissioner's Residence, Manila, Philippine Islands, 29 April 1946.

PART B

5. Place and Date of Trial:

High Commissioner's Residence, Manila, Philippine Islands.

Arraignment - 29 April 1946.

Trial - 29 April 1946.

WD AGO Form R-5392
21 June 1946

(Over)

(AG

Inclosu[illegible] 000.5 (20 Jan 46) WDSCA) 21 June 1946.

6. Judgment and Sentence (Relate to Specific Accused)

Kin Ryu RIN - 30 April 1946, death by hanging.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

Kin Ryu RIN - 24 May 1946, sentence approved, execution withheld by Lieutenant General W. D. Styer, C. G., AFWESPAC, pending action of Confirming Authority.

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8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

Kin Ryu RIN - 12 June 1946, sentence confirmed and ordered executed by General of the Army, Douglas MacArthur, SCAP, under the supervision of, and at the time and place to be designated by the C. G., AFWESPAC.

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9. Date and Place of Execution of Sentence:

17 July 1946, Laguna Province, Philippine Islands.

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. D.

25-8962-1-300

US. 209

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL

GSJA 000.5

APO 707
20 July 1946

SUBJECT: Execution of War Criminals Fujishige, Ono, Tabuo and Rin.

TO : Commander-in-Chief, United States Army Forces, Pacific,
APO 500.
Attention: Theater Judge Advocate.

Japanese war criminals Masatoshi Fujushige, Satoru Ono, Chikanori Tabuo and Kin Ryu Rin, were each executed upon 17 July 1946 pursuant to AFPAC Military Commission Orders Number 19, dated 15 May 1946; Military Commission Orders Number 22, dated 31 May 1946; Military Commission Orders Number 21, dated 25 May 1946 and Military Commission Orders Number 24, dated 13 June 1946.

FOR THE COMMANDING GENERAL:

1 cc to
Legal Section, SCAP (Manila Branch)
Executive Officer, War Crimes Trials.

HEADQUARTERS
PHILIPPINE DETENTION AND REHABILITATION CENTER
APO 707

17 July 1946

Memorandum To: Commanding General, AFWESPAC, APO 707

Subject : Report on Execution of Japanese

1. In compliance with paragraph 4 of your SECRET Memorandum to Commanding General, Base X and Adjutant General, AFWESPAC dated 11 February 1946, the following report is submitted:

a. As ordered by your SECRET letter, 9 July 1946, Subject: Execution of Sentence, GSJA 000.5 the following named Japanese were executed by hanging at this Center on 17 July 1946 at hours indicated below:

Masathoshi Fujishige	— Trap sprung at 1958, pronounced dead at 2010.
Satoru Ono	-- Trap sprung at 2014, pronounced dead at 2027.
Chikanori Tabuo	— Trap sprung at 2030, pronounced dead at 2041.
Kin Ryu Rin	— Trap sprung at 2044, pronounced dead at 2055.

b. The condemned prisoners were accompanied to the place of execution by a priest of his faith and an interpreter.

c. The letter, ordering the execution, was read to the prisoners at 1742 hours 17 July 1946.

d. The condemned men made the following final statements:

Masatoshi Fujishige — No statement.

Satoru Ono — "Trials for War Criminals are light for them, but I can understand that American authorities do not try to bring out all things in trial that they should."

Chikanori Tabuo — "I was not in the place where crime was committed, but I was very popular with the Philippine people and was pointed out by them."

Kin Ryu Rin — " I had followed orders from my commander and I am not ashamed of my crime. I want more justice in the trials of others who will follow me. My thanks to Lt. Gordon my defense counsel."

e. The behaviour of the condemned men was calm and stoical.

f. The bodies of the condemned and the persons of the priest and interpreter left the Center for return to the Commanding Officer, POW #1 at 2100, 17 July 1946

g. Strict compliance with all of your instructions contained in the memorandum and letters referred to above was observed, and all matters proceeded expeditiously.

JOHN H. FONVIELLE
Colonel, CAC
Commanding.

RESTRICTED

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL

GSJA 000.5

APO 707
9 July 1946

SUBJECT: Execution of Sentence.

TO : Commanding Officer, Philippine Detention and Rehabilitation Center, APO 75.

1. Your attentions is directed to Military Commission Orders No. 19, dated 15 May 1946, issued from General Headquarters, United States Army Forces, Pacific, confirming the death sentence by hanging of Masatoshi Fujishige (51-J 92648), adjudged in the case of Masatoshi Fujishige et al.

2. Your attention is also directed to Military Commission Orders No. 22, dated 31 May 1946, issued from General Headquarters, United States Army Forces, Pacific, confirming the death sentence by hanging of Satoru Ono (51-J 126298), adjudged in the case of Satoru Ono.

3. Your attention is also directed to Military Commission Orders No. 21, dated 25 May 1946, issued from General Headquarters, United States Army Forces, Pacific, confirming the death sentence by hanging of Chikanori Tabuo (51-J 42450), adjudged in the case of Chikanori Tabuo.

4. Your attention is further directed to Military Commission Orders No. 24, dated 13 June 1946, issued from General Headquarters, United States Army Forces, Pacific, confirming the death sentence by hanging of Kin Ryu Rin (51-J 23626), adjudged in the case of Kin Ryu Rin.

5. In accordance with Memorandum from Commanding General, AFWESPAC, directed to the Provost Marshal, AFWESPAC, and Adjutant General, AFWESPAC, dated 15 March 1946, subject: "Instructions Governing the Execution of Japanese War Criminals," the Provost Marshal will transfer custody of said war criminals, at such time as you may designate and you are hereby directed to execute the sentences as to these condmned war criminals, stripped of uniform, decorations and other appurtenances signifying membership in the military profession, as follows:

Place of Execution: Philippine Detention and Rehabilitation Center.
Time of Execution : 17 July 1946, at hours to be fixed by you.

RESTRICTED

RESTRICTED

Order of Execution: Masatoshi Fujishige first; Satoru Ono second; Chikanori Tabuc third; Kin Ryu Rin last.

6. The classification of this directive shall remain "SECRET" until one day after the date of execution, at which time it shall become "RESTRICTED."

J. G. CHRISTIANSEN
Major General, United States Army
Commanding

4 Incls:
AFPAC MCO
Nos. 19, 21,
22 & 24.

RESTRICTED

GENERAL HEADQUARTERS
UNITED STATES ARMY FORCES, PACIFIC

Military Commission)
:
Orders No .....24)

APO 500
13 June 1946

Before a Military Commission which convened at the High Commissioner's Residence, Manila, Philippine Islands on 29 April 1946, pursuant to Letter Order, File: AG 000.5 (5 Dec 45)LS, General Headquarters, Supreme Commander for the Allied Powers, dated 5 December 1945, subject: Regulations Governing the Trials of Accused War Criminals; Letter Order, File: AG 000.5 (12 Feb 46)LS, General Headquarters, Supreme Commander for the Allied Powers, dated 12 February 1946, with First Indorsement thereto, subject: Trial of Kin Ryu Rin; and paragraph 29, Special Orders Number 95, Headquarters, United States Army Forces, Western Pacific, dated 25 April 1946, was arraigned and tried:

Kin Ryu Rin, a civilian attached to the Imperial Japanese Army.

CHARGE: Killing a prisoner of war in violation of the laws of war.

Specification: In that Kin Ryu Rin, then a civilian attached to the Imperial Japanese Army, did, at Cabanatuan, Nueva Ecija, Luzon, Philippine Islands, on or about 11 August 1944, during a time of war between the United States of America, its allies and dependencies and Japan, willfully and unlawfully kill one Lieutenant Robert HUFFCUTT, a commissioned officer in the Armed Forces of the United States of America, then a prisoner of war held by the Imperial Japanese Armed Forces, by shooting him with a rifle, in violation of the laws of war.

PLEAS

To the Specification and Charge: "Not Guilty"

FINDINGS

Of the Specification and Charge: "Guilty"

SENTENCE

Death by hanging.

The sentence was adjudged 30 April 1946.

(MCO 24)

The following is the action of the reviewing authority:

"HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL
APO 707

24 May 1946

In the foregoing case of the United States of America vs. Kin Ryu Rin, a civilian attached to the Imperial Japanese Army, the sentence is approved. Pursuant to paragraph 3, Letter Order, General Headquarters, Supreme Commander for the Allied Powers, file AG 000.5 (12 Feb 46)LS, subject: "Trial of Kin Ryu Rin," dated 12 February 1946, execution of the sentence is withheld pending the action of the Supreme Commander for the Allied Powers.

(signed) W. D. Styer
(typed) W. D. STYER
Lieutenant General, United States Army
Commanding"

The following is the action of the confirming authority:

"GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

APO 500
12 June 1946

In the foregoing case of Kin Ryu Rin, a civilian attached to the Imperial Japanese Army, the sentence is confirmed and will be duly executed under the supervision of and at a time and place to be designated by the Commanding General, United States Army Forces, Western Pacific.

(signed) Douglas MacArthur
(typed) DOUGLAS MacARTHUR
General of the Army, United States Army,
Supreme Commander"

By command of General MacARTHUR:

PAUL J. MUELLER.
Major General, General Staff Corps,
Chief of Staff.

OFFICIAL:

C. Z. SHUGART,
Colonel, AGD,
Asst Adj Gen.

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE STAFF JUDGE ADVOCATE
APO 707

UNITED STATES OF AMERICA)
)
-vs-) REVIEW
)
KIN RYU RIN)

MANILA, P. I. DATED: 15 May 1946

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL
APO 707

24 May 1946

In the foregoing case of the United States of America vs. Kin Ryu Rin, a civilian attached to the Imperial Japanese Army, the sentence is approved. Pursuant to paragraph 3, Letter Order, General Headquarters, Supreme Commander for the Allied Powers, file AG 000.5 (12 Feb 46)LS, subject: "Trial of Kin Ryu Rin, dated 12 February 1946, execution of the sentence is withheld pending the action of the Supreme Commander for the Allied Powers.

W. D. STYER
Lieutenant General, United States Army
Commanding

AESI/JAG/log

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE STAFF JUDGE ADVOCATE

APO 707
21 May 1946

UNITED STATES -vs- KIN RYU RIN	Place of Trial	: High Commissioner's Residence, Manila, P.I.
	Arraigned	: 29 April 1946
	Tried	: 29 April 1946
	Sentenced	: 30 April 1946

CHARGE

Killing a prisoner of war in violation of the laws of war.

SPECIFICATION

In that Kin Ryu Rin, then a civilian attached to the Imperial Japanese Army, did, at Cabanatuan, Nueva Ecija, Luzon, Philippine Islands, on or about 11 August 1944, during a time of war between the United States of American, its allies and dependencies and Japan, willfully and unlawfully kill one Lieutenant Robert HUFFCUTT, a commissioned officer in the Armed Forces of the United States of America, then a prisoner of war held by the Imperial Japanese Armed Forces, by shooting him with a rifle, in violation of the laws of war.

PLEA, FINDING AND SENTENCE

Plea: Not Guilty

Findings: Guilty

Sentence: Death by hanging.

1. FORMAL MATTERS.

a. Authority of the commission to act. Commission was appointed by the Commanding General, United States Army Forces, Western Pacific, and trial had under authority of Letter Order AG 000.5 (5 Dec 45) LS, General Headquarters,

Supreme Commander for the Allied Powers, "Regulations Governing the Trials of Accused War Criminals" (R-2-105); Letter Order AG 000.5 (12 Feb 46) LS, General Headquarters, Supreme Commander for the Allied Powers. "Trial of Kin Ryu Rin" (R-3); 1st indorsement, AG 000.5 (12 Feb 46) LS, General Headquarters, AFPAC (R-4); Paragraph 95, Special Orders 95, Headquarters, AFWESPAC, 25 April 1946 (R-5).

b. Reporters, interpreters, members of the commission and personnel for the prosecution were sworn (R-1,7).

c. Charges were duly served on the accused, 2 April 1946 (R-7).

d. Rights of accused were read and explained in open court (R-8); he was represented by duly appointed counsel of his choice (R-8).

e. Accused was duly arraigned (R-9).

f. All witnesses appearing were duly sworn.

2. EVIDENCE:

The prosecution bases its case mainly on two sworn statements of the accused (R-13,68) and the testimony of Colonel John H. Bell, USA (R-15,103) and Staff Sergeant Thomas H. Bogie (R-35) both of whom were prisoners of the Japanese at Cabanatuan, where the killing occurred, and claim to be eye-witnesses to the shooting. The testimony of these two is essentially the same in substance, to wit:

That on or about 11 August 1944 at between 1130 and 1300 hours, while they were in the latrine area allowed for prisoners they heard a shot and turned to see Lieutenant Huffcutt, the deceased, lying on the ground, trying to arise. They then saw the guard in the tower fire again and Lieutenant Huffcutt fell prone and ceased moving. All of these occurred while Lieutenant Huffcutt was in his garden in an area in which prisoners were allowed. The deceased was doing

no more than working in his garden which was the general custom during this time of the day. They both testify that the deceased was shot from a guard tower outside of an 8 foot high double fence of barbed wire.

The sworn statements of the accused admit that he was a civilian guard attached to the Japanese Army and on sentry duty in the tower indicated above and that he did the shooting (R-13,68).

Colonel Ball testified that he knew the deceased and considered him a very sane and well balanced man (R-16).

Neither witness saw anything that might give provocation for shooting the deceased.

FOR THE DEFENSE:

There is no denial on the part of the defense that the accused, a Formosan employed as a civilian guard by the Japanese army, killed the deceased, in fact it is admitted. Their contention, however, and main difference from the testimony of the prosecution, is that the deceased was not shot in his garden but after having passed into the restricted area between gardens and the camp boundary fence, and while continuing to approach the boundary fence. This is testified to by the accused who further stated that when he saw the deceased start towards the restricted area he called to him to halt and fired into the air, that deceased kept approaching the boundary fence so he shot him, that he thought the prisoner was trying to escape and that he was required to shoot under prison rules (R-49,50). In a previous statement (Exhibit 3) he stated that the deceased was walking parallel to the fence a few feet inside the restricted area some 30 to 40 feet away from the fence.

Lieutenant Suehiro of the Japanese Medical Corps testified that he examined the body about 10 minutes after the shooting

and that it was lying in a ditch in the restricted area as testified to by the accused (R-76). He could not state whether the body had been moved. He further stated that in his opinion only one wound had struck the deceased, and that although there were two wounds in the left arm, indicating that a bullet had passed through it and one wound in the abdomen, he believed all three wounds were caused by the same bullet (R-78).

Lieutenant Colonel Takasaki testified that a Lieutenant Colonel Wilson of the American army, told him that the deceased had been ill, was not quite sane and had to be watched by his fellow prisoners (R-86).

3. DISCUSSION.

There are a lot of discrepancies in the testimony of both sides as to whether the guard tower was outside or inside of the double barbed wire fence and as to whether there was a row of stakes inside the camp marking the boundaries by and which prisoners could not go. In view of the fact that according to the testimony of both sides the deceased could have been shot in only one of two places, i.e. his garden or the ditch which is admitted by both sides to be out of bounds, the evidence as to the location of the towers and markers seems to be irrelevant as to the main issue. The evidence given by both the accused and Lieutenant Colonel Takasaki is in many places contradictory to statements previously made by them and incorporated as exhibits in the record (R-50,Exh 2) (R-59,Exh2)(R-84,Exh 4)(R-89)(R-90).

4. OPINION AND REASONS THEREFORE:

a. As to the Jurisdiction and Procedure.

1. The commission was properly appointed and had jurisdiction over the offense charged and the person of

the defense.

2. The accused was advised of and accorded all rights required by the prescribed regulations.

3. Findings and sentence were returned upon concurrence of two thirds of the members of the commission.

b. As to the Evidence.

In as much as there seems to be no error in the conduct of the trial the question resolves itself as to the sufficiency of the evidence. In this case there is direct testimony of both sides by eye-witnesses as to what occurred. Where such evidence is in direct contradiction it is within the province of the court to weigh it according to its merits, accept one and reject the other. In this case the court being present when the testimony was given, being able to watch the demeanor and answers of the witnesses testifying has rejected the testimony of the defendant and accepted that of the prosecution. There is sufficient evidence to justify their decision and sustain the verdict.

5. RECOMMENDATION:

It is recommended the sentence herein be approved and the record of trial be forwarded to the Commander-in-Chief, United States Army Forces, Pacific, for action under paragraph 2, 1st indorsement, General Headquarters, United States Army Forces, Pacific, 12 February 1946 to letter, General Headquarters, Supreme Commander for the Allied Powers, file 000.5 (12 Feb 46) LS, subject: "Trial of Kin Ryu Rin", 12 February 1946.

The form of action designed to effect the foregoing recommendation is attached.

JOHN M. SEDRELL, JR.
1st Lieutenant, MAC
Asst Staff Judge Advocate

I CONCUR:

ASHTON M. HAYNES
Colonel, JAGD
Staff Judge Advocate

BEFORE THE
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

UNITED STATES OF AMERICA	
-vs-	ARRAIGNMENT AND PUBLIC TRIAL
KIN RYU RIN	

VOLUME I

Pages 1 to 105

DATE: 29 April 1946

MANILA, P. I.

COPY NO.: 3

CERTIFICATION

THIS CERTIFIES that this Volume is a part of the proceedings of the Military Commission appointed by Paragraph 29 of Special Orders No. 95, Headquarters, United States Army Forces, Western Pacific, dated 25 April 1946, in the trial of the case of the United States of America against KIN RYU RIN.

Dated 30 April 1946

Archibald L. Parmelee

ARCHIBALD L. PARMELEE
Colonel, CAC
President of Commission

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

UNITED STATES OF AMERICA -vs- KIN RYU RIN	ARRAIGNMENT AND PUBLIC TRIAL

Court No. 1
High Commissioner's Residence,
Manila, P. I.
29 April 1946

Met, pursuant to notice, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL ARCHIBALD L. PARMELEE, CAC, Pres. & Law Member
COLONEL FRANCIS A. HAUSE, CAC
COLONEL EDWARD L. SUPPLE, CAC (Excused)
LIEUTENANT COLONEL STARLEY N. BOYKIN, JR., INF
CAPTAIN GLENN W. HENDRICKS, FA

APPEARANCES:

FOR THE PROSECUTION:

FIRST LIEUTENANT ROBERT A. DREYER, AC, Prosecutor

FOR THE DEFENSE:

FIRST LIEUTENANT IVAN H. GORDON, TC, Defense Counsel

INTERPRETERS FOR THE COMMISSION:

T/4 ISAMI OSATO
T/3 YOSHIYUKI MOTOYOSHI
T/3 GEORGE BABA

OFFICIAL REPORTERS FOR THE COMMISSION:

MARGARGET M. MONTGOMERY
MARJORIA TITTLE

I N D E X

WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS	COMMISSION
John H. Ball (Recall)	15	27			33 103
Thomas H. Bogie	35	43			46
Kin Ryu Rin	47	55	68	71	69
Satoru Suehiro	74	79	82	83	82
Iku Takasaki	84	87		94	94
James Iwanaga	96	100	101		

DOCUMENTARY EVIDENCE

INCORPORATED INTO RECORD

Letter Order, AG 000.5 (12 Feb 46) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 12 February 1946, Subject, "Trial of Kin Ryu Rin" and 1st Ind. thereto. 3

Extract of Special Orders No. 95, Paragraph 29 thereof, Headquarters, United States Army Forces, Western Pacific, dated 25 April 1946. 5

Letter Order, President of Commission, dated 29 April 1946, Subject, "Summoning and Swearing Witnesses for RIN KIN RYU Trial." 6

Charge and Specification 9

EXHIBITS

RECEIVED IN EVIDENCE

Prosecution's Exhibit No:	
1	2
2	14
3	68
4	90
Defense Exhibit No. A	49

P R O C E E D I N G S

The Commission convened at 0830 hours, 29 April 1946 in Court Number 1, High Commissioner's Residence, Manila, P.I.

COLONEL PARMELEE: The Commission will convene and hear any matter to be brought before it.

LIEUTENANT DREYER: If the Commission please, because he does not speak English, the accused has been furnished a personal interpreter of his own choice who will translate all matters directly to him as the case proceeds. Subject to the approval of the Commission, therefore, it has been stipulated between the accused, his defense counsel and the prosecution that the proceedings need not be translated by the official interpreters in open court for the benefit of the accused unless the accused subsequently requests otherwise as to any specific portion or portions thereof.

COLONEL PARMELEE: Does the defense agree to that stipulation?

LIEUTENANT GORDON: The defense does.

COLONEL PARMELEE: Does the accused in person join in that stipulation?

LIEUTENANT GORDON: He does.

COLONEL PARMELEE: The stipulation will be approved as stated.

LIEUTENANT DREYER: There has been referred to this Commission for trial the case of the United States of America against Kin Ryu Rin. All members of the Commission, the accused, his regularly appointed defense counsel, and the prosecutor being present, the prosecution is ready to proceed.

COLONEL PARMELEE: You may proceed.

LIEUTENANT DREYER: The prosecution offers in evidence the following document:

"Letter Order, AG 000.5 (5 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 5 December 1945. Subject, 'Regulations Governing the Trials of Accused War Criminals.' "

COLONEL PARMELEE: Is there any objection by the defense?

LIEUTENANT DREYER: No objection, Sir.

COLONEL PARMELEE: The document will be received in evidence as Prosecution's Exhibit No. 1.

(Prosecution Exhibit No. 1 received in evidence.)

LIEUTENANT DREYER: The prosecution submits for incorporation into the record of these proceedings the following documents:

Letter Order, AG 000.5 (12 Feb 46) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 12 February 1946, Subject, "Trial of Kin Ryu Rin" and 1st Indorsement thereto same date;

Extract of Special Orders No. 95, Paragraph 29 thereof, Headquarters, United States Army Forces, Western Pacific, dated 25 April 1946;

Letter Order, President of this Commission, dated 29 April 1946, Subject, "Summoning and Swearing Witnesses for RIN KIN RYU Trial."

COLONEL PARMELEE: Any objections by the defense to the introduction of these documents?

LIEUTENANT GORDON: There is no objection, Sir.

COLONEL PARMELEE: There being no objection, the documents will be incorporated into the record.

"GENERAL HEADQUARTERS
"SUPREME COMMANDER FOR THE ALLIED POWERS

"AG 000.5 (12 Feb 46) LS

APO 500
12 February 1946

"SUBJECT: Trial of Kin Ryu Rin.

"TO : Commander-in-Chief
United States Army Forces, Pacific, APO 500.

"1. It is desired that a Military Commission be appointed for the trial of Kin Ryu Rin, a civilian attached to the Japanese Imperial Forces, for the alleged offense indicated in the attached Charge.

"2. The trial is to be held in the city of Manila, Philippine Islands. The trial shall be conducted in conformity with Regulations Governing the Trials of Accused War Criminals, dated 5 December 1945, General Headquarters, Supreme Commander for the Allied Powers.

"3. The record of trial including judgment or sentence and the action of the appointing authority will be forwarded to this headquarters. Unless otherwise directed, the execution of any death sentence will be withheld pending the action of the Supreme Commander for the Allied Powers.

"FOR THE SUPREME COMMANDER:

"/s/ H. W. Allen
/s/ H. W. ALLEN.
Colonel, AGD,
Asst. Adjutant General.

"1 Incl:
Chg vs Kin Ryu Rin"

"BASIC Ltr, GHQ, SCAP, File 000.5 (12 Feb 46) LS dated 12 Feb 46 subj: "Trial of Kin Ryu Rin."

"AG 000.5 (12 Feb 46) LS 1st Ind.

"General Headquarters, United States Army Forces, Pacific, APO 500, 12 February 1946.

"TO: Commanding General, United States Army Forces, Western Pacific, APO 707.

"1. Pursuant to basic communication you are hereby directed to appoint a Military Commission for the trial of the following named civilian attached to the Japanese Imperial Forces:

"Kin Ryu Rin

"2. All records of trial including judgment or sentence and the action of the appointing authority will be forwarded to this headquarters. Unless otherwise directed, the execution of any death sentence will be withheld pending the action of the Supreme Commander for the Allied Powers.

"3. The following named officer, assigned to the War Crimes Investigating Detachment, this headquarters, is made available to your command for service as prosecutor on the Military Commission to be convened by you for this purpose:

"2d Lt. Robert A. Dreyer, AC

"By command of General MacARTHUR:

"/s/ H. W. Allen
/t/ H. W. ALLEN.
Colonel, AGD,
Asst. Adjutant General.

"1 Incl:
Chg as indicated"

"RESTRICTED

"HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
APO 707

"Special Orders)
:
"No. .....95)

25 April 1946

EXTRACT

"29. The following officers are appointed members of a Military Commission to meet in the City of Manila, Philippine Islands, at the call of the President thereof, for the trial of Kin Ryu Rin, accused war criminal. (Authority: 1st Ind. GHQ, AFPAC, APO 500, 12 Feb 46, to letter GHQ, SCAP, file AG 000.5 (12 Feb 46) LS, dated 12 Feb 46, subj: "Trial of Kin Ryu Rin"):

"Col. Archibald L. Parmelee CAC Pres. & Law Member
Col. Francis A. Hause CAC
Col. Edward L. Supple CAC
Lt. Col. Starley N. Boykin, Jr. INF
Capt. Glenn W. Hendricks FA

"The prosecution will be conducted by 1st Lt. Robert A. Dreyer, AC. The Defense Counsel will be 1st Lt. Ivan H. Gordon, TC.

"The Commission will follow the provisions of Letter, GHQ, SCAP, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals," and is authorized to employ or appoint such interpreters, stenographic reporters and other assistants as it shall deem advisable.

"The record of trial including any judgment or sentence will be transmitted directly to this headquarters for action by the appointing authority.

"BY COMMAND OF LIEUTENANT GENERAL STYER:

"OFFICIAL:

"/s/ Benito Morales
/t/ BENITO MORALES,
Colonel, AGD
Asst Adj Gen.

J G CHRISTIANSEN
Major General, USA
Deputy Commander, and
Chief of Staff

"DISTRIBUTION:
War Crimes (60)

RESTRICTED"

"MILITARY COMMISSION
Convened by the
COMMANDING GENERAL
UNITED STATES ARMY FORCES, WESTERN PACIFIC

"APO 707
29 April 1946

"SUBJECT: Summoning and Swearing Witnesses for RIN KIN RYU trial.

"TO: Robert A. Dreyer, 1st Lt., AC

"1. Pursuant to authority of provisions of Letter, General Headquarters, Supreme Commander for the Allied Powers, 5 December 1945, subject: "Regulations Governing the Trials of Accused War Criminals," you are authorized, as prosecutor of RIN KIN RYU, referred for trial to the Military Commission convened by the Commanding General, United States Army Forces, Western Pacific, by Paragraph 29, Special Orders No. 95, dated 25 April 1946, to issue, for this Commission, summons to compel the attendance of witnesses to such trial and to require such witnesses to bring with them any papers or documents which may be required as evidence in such trial, and to administer oaths or affirmations to witnesses and other persons.

"/s/ Archibald L. Parmelee
/t/ ARCHIBALD L. PARMELEE
Colonel, CAC
President of Commission"

LIEUTENANT DREYER: The prosecution is now ready to proceed with the arraignment of Kin Ryu Rin, ISN 51J23626.

COLONEL PARMELEE: Is that the correct ISN of the accused?

LIEUTENANT GORDON: That is, sir.

COLONEL PARMELEE: The reporters will be sworn.

(Reporters Margaret M. Montgomery and Marjoria Tittle were sworn as official reporters.)

COLONEL PARMELEE: The interpreters will be sworn.

(Interpreters were sworn.)

The Commission will be sworn.

(The Commission was sworn.)

COLONEL PARMELEE: The prosecution will be sworn.

(The prosecutor was sworn.)

LIEUTENANT DREYER: A certified copy of the Charge and Specification against Kin Ryu Rin, together with a true and complete translation thereof in Japanese, was served upon the accused by Lieutenant Robert A. Dreyer on 22 April 1946 at Nichols Field, Pasay, Rizal, Philippine Islands and on 27 April 1946, certified copies of the same documents were again served upon the accused by Lieutenant Robert A. Dreyer, at the High Commissioner's Stockade, Dewey Boulevard, Manila, P. I.

COLONEL PARMELEE: Does the accused admit service of the Charge, Specification and translation as stated by the prosecutor?

LIEUTENANT GORDON: He does, Sir.

COLONEL PARMELEE: The rights of the accused as set forth in Paragraph 5(b) of Prosecution Exhibit 1 will now be

read and explained to the accused.

LIEUTENANT DREYER: The accused and his defense counsel will now rise and face the Commission: (Reading)

"Rights of the Accused. The accused shall be entitled:

"(1) To have in advance of trial a copy of the charges and specifications clearly worded so as to apprise the accused of each offense charged.

"(2) To be represented prior to and during trial by counsel appointed by the convening authority or counsel of his own choice or to conduct his own defense.

"(3) To testify in his own behalf and have his counsel present relevant evidence at the trial in support of his defense, and cross-examine each adverse witness who personally appears before the commission.

"(4) To have the substance of the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them."

COLONEL PARMELEE: Does the accused fully understand his rights?

LIEUTENANT GORDON: He does, Sir.

COLONEL PARMELEE: Certified copies of the Charge and Specification, together with true and correct translations thereof into Japanese, having been served upon the accused on 2 April 1946 and again on 27 April 1946, and it appearing that the provisions of sub-paragraph 5(b) (1) of "Regulations Governing the Trials of Accused War Criminals", Prosecution's Exhibit 1, have been complied with, whom does the accused desire to introduce as defense counsel?

A (by accused) First Lieutenant Gordon.

LIEUTENANT DREYER: Is Lieutenant Gordon your duly appointed defense counsel?

A Yes, that is so.

LIEUTENANT DREYER: Will the defense counsel concede that he commenced preparation for the defense of this case on or about 3 March 1946?

LIEUTENANT GORDON: That is conceded, sir.

COLONEL PARMELEE: The Charge and Specification will be read to the accused.

LIEUTENANT DREYER: (Reading)

"GENERAL HEADQUARTERS
"SUPREME COMMANDER FOR THE ALLIED POWERS

"Before the MILITARY COMMISSION convened by the COMMANDING GENERAL United States Army Forces, Western Pacific	))))))	UNITED STATES OF AMERICA vs Kin Ryu RIN

"CHARGE

"Killing a prisoner of war in violation of the laws of war."

"SPECIFICATION

"In that Kin Ryu RIN, then a civilian attached to the Imperial Japanese Army, did, at Cabanatuan, Nueva Ecija, Luzon, Philippine Islands, on or about 11 August 1944, during a time of war between the United States of America, its allies and dependencies and Japan, willfully and unlawfully kill one Lieutenant Robert HUFFCUTT, a commissioned officer in the Armed Forces of the United States of America, then a prisoner of war held by the Imperial Japanese Armed Forces, by shooting

him with a rifle, in violation of the laws of war.

"Dated: 11 February 1946.

"(s) Alva C. Carpenter
"(t) ALVA C. CARPENTER
Colonel, JAGD
United States Army"

"AFFIDAVIT

"Before me personally appeared the above named accuser this 11th day of February 1946, and made oath that he is a person subject to military law and that he personally signed the foregoing charge, and further that he has investigated the matters set forth in the charge, and that it is true in fact, to the best of his knowledge and belief.

"(s) Edmund M. Sweeney
1st Lt. JAGD AUS"

"GENERAL HEADQUARTERS
"UNITED STATES ARMY FORCES, WESTERN PACIFIC
"APO 707

25 April 1946

"Referred for trial to Lt. Robert A. Dreyer, AC, Prosecutor of the Military Commission appointed by paragraph 29, Special Orders No. 95 this headquarters, 25 April 1946.

"By command of Lieutenant General STYER:

"(s) W. P. Moore
"(t) W. P. MOORE
Colonel, AGD
Ass't Adjutant General

"I hereby certify that I have served a copy hereof, together with a true and complete translation thereof into Japanese, on the above-named accused this 27th day of April 1946.

"(s) Robert A. Dreyer
1st Lt. AC
Prosecutor"

LT. DREYER: The prosecution requests that the Charge, Specification, Affidavit of Accuser, Reference for Trial, and the Certificate of Service be incorporated into the record.

COLONEL PARMELEE: There being no objection, it is so ordered. Is the accused now ready to enter his plea?

LIEUTENANT GORDON: Yes, sir. The accused pleads Not Guilty to the Charge and Specification, Sir.

COLONEL PARMELEE: Are the prosecutor and defense counsel ready to proceed with the trial of the accused? Defense?

LIEUTENANT GORDON: The defense is ready.

COLONEL PARMELEE: Prosecution?

LIEUTENANT DREYER: The prosecution is ready.

COLONEL PARMELEE: Both sides being ready, the Commission will proceed with the trial of the United States of America against Kin Ryu Rin.

LIEUTENANT DREYER: Sir, the prosecution waives its opening statement.

The prosecution offers in evidence, as its Exhibit No. 2, a statement written in Japanese, with a fully certified translation thereof. This is offered as one exhibit, both the handwritten Japanese, the typewritten translation, and the certificate of the accuracy of the translation.

LIEUTENANT GORDON: The defense objects to the admission of this statement in the record on the ground it was taken without any statement to the accused that he was testifying against himself, without warning him of his rights, and on the ground that the defendant was testifying against himself in this case.

LIEUTENANT DREYER: Sir, this document is clearly admissible in evidence without conceding the truth of the allegations made by defense counsel. Reference is made to --

LIEUTENANT GORDON: Not allegations, Sir, I am making an objection.

LIEUTENANT DREYER: Your objections are being based on matters of fact which are not in evidence. There is no proof one way or the other whether the accused was warned. Now, in accordance with prosecution's Exhibit No. 1, "Regulations Governing Trial of Accused War Criminals", reference is made to paragraph 4, rather 5(d) (7): "All purported confessions or statements of the accused shall be admissible without prior proof that they were voluntarily given, it being for the Commission to determine only the truth or falsity of such confessions or statements,"

LIEUTENANT GORDON: I am not arguing that the defendant was coerced to give the statement. I am arguing that the defendant was not warned as to statements taken from him.

LIEUTENANT DREYER: Sir, there never has been a rule of law that the accused need be warned. The only question that that related to is the voluntariness of the confession.

LIEUTENANT GORDON: I think it is a rule of law that he should be warned that whatever he says may be used against him.

COLONEL PARMELEE: The Commission will close to consider the objection.

LIEUTENANT DREYER: Sir, would you like us to leave the courtroom?

COLONEL PARMELEE: No.

(Whereupon the Commission retired into Executive Session)

COLONEL PARMELEE: The Commission is in session. It appearing to the Commission that the document objected to by the defense is admissible under the provisions of paragraph 5 of the Letter, General Headquarters, Supreme Commander for the Allied Powers, dated 5 December 1945, Subject: " Regulations Governing Trials of Accused War Criminals", the objection is not sustained.

LIEUTENANT GORDON: Exception, Sir.

COLONEL PARMELEE: Let the record show exception made.

LIEUTENANT DREYER: Let the record show that the prosecution reads into the record the certified translation of prosecution's Exhibit 2.

"Statement of RIN KIN RYU"

"1. Were you at Cabanatuan in August 1944?

Yes.

"2. Were you a guard at that time?

Yes.

"3. On August 11, 1944, did you shoot 2nd Lt. HUFFCUTT?

Yes, I shot him.

"4. Did you shoot him with a rifle?

Yes.

"5. Where were you at that time?

I was standing guard on the 2nd shift of the 1st observation post.

"6. How many rounds did you fire?

Two rounds.

"7. How many rounds hit?

I later heard that the two rounds both hit.

"8. Did you fire both rounds from the observation post?

Yes.

"9. After you fired on him, how long did it seem that he lived?

He seemed to have died immediately.

"10. What was your rank at that time?

I was a civilian guard attached to the army.

" I swear that this statement was made of my own free will and that there were no threats whatsoever."

"/s/ Rin Kin Ryu "

LIEUTENANT DREYER: I now ask that prosecution's Exhibit No. 2 be admitted into evidence.

COLONEL PARMELEE: Admitted.

(Prosecution's Exhibit No. 2 was received in evidence)

LIEUTENANT DREYER: Prosecution calls as its first witness, Colonel John H. Ball.

LIEUTENANT GORDON: At this time, I wish to renew my objection to the admission of the statement in evidence.

COLONEL PARMELEE: Let the record show that the defense objected to the admission of this exhibit, prosecution's Exhibit No. 2 .

LIEUTENANT DREYER: And that the objection was again overruled

COLONEL PARMELEE: Correct.

JOHN H. BALL

called as a witness for the prosecution, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY LIEUTENANT DREYER:

Q Will you please state your name, rank and serial number?

A John H. Ball, Colonel, Field Artillery Corps, 06502.

Q Sir, are you a member of the Regular Army?

A I am.

Q How long have you served in the Army, sir?

A Thirty years.

Q Were you captured by the Imperial Japanese Army, sir?

A I was.

Q Were you ever a prisoner of the Japanese Army?

A I was.

Q Where were you imprisoned, sir, in August 1944?

A Cabanatuan.

Q Did you know Lieutenant Robert Huffcutt?

A Yes, I did.

Q What was his duty prior to the time that he was a prisoner of the Japanese?

A Aide to High Commissioner Sayre.

Q Was he at Cabanatuan when you were there?

A He was.

Q Sir, will you please tell the Commission what the duties, as prisoners, of all the Americans at Cabanatuan were?

A At that time the duties were as prescribed by the Japanese and the major duties consisted of working on the farm, on the garden detail, on the airstrip at Cabanatuan, on the

roads or on the carabao trail going into Cabanatuan.

Q Sir, were commissioned officers required to perform those duties as well as enlisted men?

A Yes, there was no distinction there.

Q Do you know whether Lieutenant Huffcutt was required to perform any labor at Cabanatuan?

A Yes, I know that he did work on the farm because I worked beside him on one or two occasions.

Q Was he working on the farm in August 1944?

A Yes.

Q Did you have occasion to talk to him around that period?

A Yes, early in August or the latter part of July, the last week in July, I could not say the exact time but I got some talinum cuttings from him.

Q You got some what?

A Talinum cuttings, it is a sort of native spinach and it grows there, and he gave me about one and a half dozen cuttings, I guess.

Q What kind of man was Lieutenant Huffcutt?

A I thought he was very well balanced and intelligent, he wasn't one of those to go off the deep end and jump at conclusions, he always had his feet on the ground and he didn't appear excitable at any time, and during the time we were imprisoned prisoners reacted in different ways. Some of them became highly emotional, some others irritable and constantly in an argument or cussing somebody out, and others just wanted to lay there and became melancholy but he seemed to hold his balance about as well as anybody I saw in the camp.

Q Sir, would you please tell the Commission what the hours

of labor were on the farm?

A Seven-thirty -- at seven they started forming to go to work and they would get back at five, with one hour for lunch except those who went to the airstrip. Their lunch was taken out to them and they didn't come back for the noon meal.

Q Now, what was the practice at Cabanatuan with respect to personal gardens?

A You worked your personal gardens in any spare time that you had. You couldn't get out before reveille. As a matter of fact, the tripsto the latrines were limited and at times they had a check-out and they had guards watching you when you went to the latrines and there was an alteration about that time that calls of nature would be answered between reveille in the morning and nine o'clock at night, that was the Japanese order, so that any spare time you had if you could get a piece of ground you could put a garden on it. Now, the gardens varied in size from the size of a table to a little strip along the path. About that time, 1944, the gardens were at their peak. Every available inch was under cultivation with pigweed or anything that you could get to plant and they get out at noon and work to get anything to quan.

Q To what?

A To quan.

Q Spell it.

A Q-u-a-n.

Q What does that mean?

A It is a Filipino term that you apply to anything that doesn't have a name and "quanning", the term "quanning", arose to mean cooking, anything that you have to cook, weeds, or

maybe one of those native eggplants or something like that and cook it. Now at that time, they--- individual cooking was prohibited and in order to take advantage of these little extras that you could get, pigweed or whatever it was, they arranged with the Japanese to have it cooked at a central point in each group. You would put it in a bag or whatever you had, tie it up in a rag, and throw it into one big boiler and those who worked on the farm would usually at noon go to their gardens and get whatever they could and then turn it over to somebody too sick to go out and they would put it in the one boiler so that when they came back they would have extra things to eat.

Q Was the supplementary food produced in those gardens important to the prisoners?

A Extremely so, extremely so.

Q Why was that, sir?

A Because of the very, very limited ration that the Japanese issued.

Q Would you please, sir, describe for the Commission the location of that garden, the general layout of the camp and the portion of the garden with reference to the stockade?

A Do you mean a description of the camp and the relative position of his garden in the camp?

Q Yes, sir.

A The camp in which the prisoners were confined was about 200 yards in an easterly and westerly direction and about 800 yards in a northerly and southerly direction, making a rectangle about 200 by 800 yards. That was divided into three groups, each group taking about one-third of the camp, and I was in

the second group. His garden was about the center of the whole compound and about 75 or 80 feet inside of the east fence.

Q What was that east fence that you spoke of, sir?

A That was a double barbed wire fence built around the north, east, and south sides of the enclosure. The west side had a road running in between, running north and south between the Japanese camp and the prisoners. On that road there were guards patrolling all the time and it had only a single barbed wire fence.

Q Sir, were there any guards on the east side?

A At all times there were guards on the east side of the camp in the daytime, they were on towers, and there were three towers about 30 feet off the ground, about equally spaced, three along the east side of the fence. In the daytime the guards were on these and at night they patrolled and the guard was increased and I imagine they patrolled about 100 meters.

Q Sir, would you please locate the three towers you mentioned with reference to their distance from the northeast corner of the camp?

A They were all about, roughly, 30 feet outside of the enclosure and one at the most northern end was outside group one, perhaps in the center of group one.

Q How far would that be from the northeast corner?

A Approximately 100 yards. I have no way of saying positively, saying what the distance was, but approximately 100 yards. The next one was located opposite the center of group two.

Q How far from the first tower?

A Roughly 250 yards. The third was opposite the center of

group three and that was on the highest ground. The ground sloped to the north. Group three was practically level, group two was sloped to the north, and group one was down in a hollow.

Q How far was the No. 3 Tower from the No. 2 Tower?

A Roughly, 250 yards.

Q Now, Sir, what was there east of the barbed wire fence? What was the character of the terrain?

A Well, in the southeast corner, that is where the farm first started.

Q I am sorry, Sir, I made an error in my question. I didn't mean east of the fence; I meant west of the fence?

A There was an inside guard. I don't know whether that answers your question, but there was a path that the inside perimeter guards walked and those were Americans who were assigned and were on guard at all times to help prevent the escape of American prisoners.

Q How far was that path inside the double barbed wire fence?

A 30 to 35 feet.

Q Where were the gardens with reference to that path?

A They were all west of the path.

Q Now, how far west was Lt. Huffcutt's garden of that path?

A At that particular point, about 40 feet. This--the gardens were all west of the path, but the path did not run in a straight line, and the path was not the boundary for it. Down to about that place a ditch, a drainage ditch from the latrine--now, naturally the open ground was around the latrine area and that was where the gardens were. However, everything was planted around a bahay, but the gardens were down in the latrine area; principally there, because that was the open ground.

Q Now, do you remember when Lt. Huffcutt was shot?

A Yes, I do.

Q About what date was that, sir?

A That was, as I recall it, I wouldn't be positive about the date, but I think it was August 11, 1944. I have no -- nothing to tie it in, except the shooting itself, and it-----

Q Sir, at what time of day did that shooting occur?

A During the noon hour.

Q Did you see it with your own eyes?

A Yes, I did.

Q Will you please tell the Commission what you saw at that time?

A As I walked down to the latrine -- the latrines were on the east side of the compound -- I lived in a bahay on the extreme west side opposite the Japanese officers. I was in this small bahay, and I had to walk across the whole compound to get to the latrine. As I walked down, I saw Huffcutt and another man in his garden. I didn't know the other man; I knew Huffcutt.

Q In his garden, you refer to Huffcutt's garden?

A Yes, sir, in Huffcutt's garden. I went to the latrine, and the latrine ran east and west, and I was facing south toward the latrine. There was a few -- there were a few people working in their gardens south of me and north of me gathering stuff for the evening meal.

Q May I interrupt here to ask another question, sir? Will you please describe the construction of the latrines? What type of walls did they have?

A Built-up walks.

Q Not walks but walls.

A These were the most improved that we had had during the three weeks there. They were an improvised septic tank, a hole built as deep as provisions would permit, and then put a trough with the seat over it, the box seat over it. This was built up about--the trough was built up about 4 feet off the ground on a mound, so you would get drainage down into the septic tank. The washing was done by cutting an oil drum on a bias and running an axle through it, filling it with water and every couple of hours tipping it up and washing the waste matter down into the septic tank. The seat was 2½ feet or three feet on top of that mound.

Q Were there walls to obstruct your view of the surrounding area?

A Oh, no, some did not have a roof on. The one in that particular locality did have a roof on it, a sawali roof.

Q How was that roof supported?

A By four posts.

Q One at each corner?

A Yes.

Q Nothing else?

A No.

Q Excuse my interruption. Will you please go on describing what you saw at that time?

A I heard some people talking to the north of me and I heard a shot. I turned around and I saw the man who had been working with Huffcutt running toward the barracks. I then looked and I saw up in the tower--I saw Huffcutt lying down and trying to get up, and I looked up into the tower and saw the

Japanese sentry with his rifle on the railing that went around the tower - the 2 x 4.

Q Had you heard a shot fired?

A I heard a shot. That is what attracted my attention. I didn't see the shot fired. I watched, and in a very short period of time, perhaps a half minute, I saw smoke from the rifle held by the sentry up in the tower. I heard this shot and I saw Huffcutt who was trying to get up. He was on his knees trying to get up and seemed to be hollering, but I saw him keel over.

Q After the second shot?

A After the second shot.

Q From what tower was that shot fired?

A That was fired from the tower opposite Group 2.

Q How many shots were fired altogether?

A Two, that I know of.

Q Was Huffcutt living after you heard the first shot?

A Yes. He was trying to get up after I heard the first shot. He was lying in his garden and trying to get up.

Q What did you do after the second shot was fired?

A Well, experience had taught me that it was a good thing to get inside the bahay when a Japanese came into the compound, and I hastened to it -- to my own bahay, and I believe Captain Archer was at the latrine when I first came there, and he was talking with us. He would get stuff and we would all pool it and divide it among ourselves, anything we could get. He came in at noon and said: "Did you see that?" Before -- no -- he came in -- we had our mess already -- came shortly afterwards, after I reached there, and said that they shot Lt. Huffcutt.

Q Had you seen Lt. Huffcutt move after the second shot?
A No, I didn't stick around there. It wasn't healthy to be around there, after the Japanese came. There was quite a bit of excitement. They started yelling and the Americans were naturally getting -- when I went up to my own bahay, they were getting there -- because news like that spreads quickly, and this particular case, we thought we had some security or reasonable safety inside the barbed wire fence, but this was considered a deliberate murder, and took what feeling of security we had away from us and created more resentment -- as much resentment as any I know among the prisoners.

LIEUTENANT GORDON: I request that this part of the answer be stricken.

COLONEL PARMELEE: On what grounds?

LIEUTENANT GORDON: I don't believe the answer is responsive to the question put to the witness; I don't think it is relevant to the question and I think it is conclusion on the part of the witness.

LIEUTENANT DREYER: Sir, the prosecution has no objection to striking out that part of the answer which followed: "This was considered".

COLONEL PARMELEE: Does that satisfy the objection of the defense?

LIEUTENANT GORDON: It does, Sir.

COLONEL PARMELEE: Such part will be stricken out.

Q (By Lieutenant Dreyer) Now, Colonel Ball, you definitely saw with your own eyes that second shot being fired?
A Yes, sir.

Q Now, where was Lt. Huffcutt lying after that second shot was fired?

A In his garden.

Q And how far -

A On the eastern edge of his garden.

Q And was that within the permitted boundaries?

A Oh, yes, that was his garden, at least 30 feet from the path.

Q Were Lt. Huffcutt's actions, to your personal observation, always the actions of a rational man?

A Oh, yes.

LIEUTENANT DREYER: No further questions.

COLONEL PARMELEE: Does the defense desire to cross examine immediately or would it be agreeable after a ten minute recess?

LIEUTENANT GORDON: As it pleases the Commission.

COLONEL PARMELEE: You have no objection to a ten-minute recess?

LIEUTENANT GORDON: No, sir.

COLONEL PARMELEE: The Commission will recess for ten minutes.

(Short Recess)

COLONEL PARMELEE: The Commission is in session.

CROSS EXAMINATION

BY LIEUTENANT GORDON:

Q Colonel Ball, what was your grade in the month of August 1944?

A Lieutenant Colonel.

Q Do you know how old a man Lieutenant Huffcutt was?

A Oh, in his late twenties or thirty, somewhere around there.

Q Do you know whether Lieutenant Huffcutt, while he was confined at Cabanatuan while you were there, had ever undergone any medical treatment?

A No, I don't.

Q I believe you testified that the compound was surrounded by a double wire fence, is that correct?

A No, not surrounded. The double wire fence was on the north, east and south sides.

Q But at the point where this incident took place, there was a double wire fence, is that correct?

A Yes, that is correct.

Q What was the landmark, would you say, inside the double wire fence or next point of delineation?

A That varied in the section of the camp in which you were. It varied in groups, too.

Q Pardon me, Colonel, I am going to confine myself to that vicinity where this incident took place.

A Next was the perimeter guard path.

Q And what came next?

A The ditch, the trench from the latrine.

Q On this perimeter path, there were two ditches, one on

each side?

A Yes, the path was built up. However, there was gravel used and it was elevated, built up by digging dirt from each side and throwing it into the center.

Q And what was the next demarcation?

A Nothing.

Q Do I understand then at this point there was only one perimeter walk?

A Only one in use.

Q Pardon me, Colonel Ball, was there one perimeter path at this point or were there two, not whether they were used or not.

LIEUTENANT DREYER: If the Commission please, I think that Colonel Ball should be permitted to answer that question in his own way. The answer to the question depends upon the interpretation that the witness gives to the word "perimeter path". Does it mean the path along which the guard walked at that time, does it mean where the guard used to walk --

LIEUTENANT GORDON: I will strike out the word "perimeter".

BY LIEUTENANT GORDON:

Q I ask you whether at this point in this vicinity there were two paths.

A May I give you the history of these inside boundaries as I recall it? That, I think, will clarify your --

Q You may give the history and if I do not like it I will stop you.

A Well, first in 1942 the orders were that we could not approach the barbed wire fence which was single at that time, that we could not approach closer than five meters on the west or east side. Now on the east side they never could reduce

it more than two meters because the buildings were against it. They started the perimeter guard in 1942. They just followed the high ground wherever they could get dry footing and the path didn't have any general direction. It curved around and then they started building the new perimeter path which was about 40 feet from the outside barbed wire fence, but they also started building a drainage ditch from the latrine then up in group two which ran parallel, approximately parallel to this path and it was about 40 feet from the path, 30 to 40 feet, something like that, I can't tell exact. Now, in that section where this drainage ditch was at first they announced that the perimeter path, you could not approach it. Later on they announced that that ditch in that particular locality, that drainage ditch was the boundary so that there was no garden. Now, the older path in that section which was in use at that time, that was farther in, that was perhaps 50 feet in, or 60 feet.

Q So that the new path was in between the barbed wire fence and the old path?

A At that point, yes.

Q We will still confine ourselves, unless otherwise stated, to the vicinity in which this incident took place.

A Yes.

Q Do you recall whether there was a single strand barbed wire fence on the easterly side of the compound about that time?

A On the northern side.

Q East and north?

A I don't know about the north, I know it was not in group two.

Q Had one been commenced on any side, particularly on the east side?

A No, that was put up about five days after the shooting.

Q Do you recall whether there was a row of stakes about one and a half feet high in that area on the east side?

A Not at that time there weren't any stakes. Those were also put in when they started to put in this single strand wire to make, to definitely make the limits we could go but they were not in at that time.

Q I believe you said the latrines ran east and west.

A Not all. The latrine that I sat on was about 12 -- the box was 12 by 14 feet long and it ran east and west, but some ran north and south and there were approximately 10 or 12 latrines in the whole enclosure.

Q Now, would you say that the direction of those 10 or 12 latrines was east or west, or north and south parallel to the fence in a line?

A No. In group two where I was located they ran generally east and west.

Q Then they did not run parallel, the boxes --

A No, the boxes ran at right angles to the fence.

Q And you were sitting facing south?

A Facing south.

Q And the incident took place north of you?

A North of me.

Q Did you hear any yelling before the first shot?

A Well, I heard people calling across to one another in their gardens but I paid no attention to it, there was no unusual yelling other than that in every group of men you will

have some shouting across and I heard that, sir.

Q Do you recall hearing any voice which would sound like giving an order?

A No.

Q How far was Lieutenant Huffcutt · shot from where you were sitting?

A Less than 100 yards.

Q Was he shot at a spot where the perimeter walk was?

A He was shot inside his garden. His garden was up against the old perimeter walk and the ditch and at that point there was no garden, there was about 5 feet, something like that, maybe 6 feet, between the ditch and the old perimeter walk. Now his garden came up to the old perimeter walk.

Q Was it the old perimeter walk at that time?

A It wasn't used at that time, and it wasn't used by the guard.

Q I believe you also said that the prison had a guard patrolling the perimeter walk.

A Always.

Q Do you recall whether that guard was on duty at the time this incident took place?

A No, I don't recall that he was on --- I am positive that he was on duty, but I did not at that time make special note of it.

Q In other words, you don't recall seeing the guard at the time the incident took place, you only supposed that was the regulation?

A I can be more than specific because I know well enough that in the military service when you have a 24-hour guard

posted the guard is on there for 24 hours.

Q But you cannot say that the guard was there of your own knowledge?

A No, I can't say that I saw him.

LIEUTENANT GORDON: That is all, sir.

COLONEL PARMELEE: Is there any redirect examination?

LIEUTENANT DREYER: No questions.

COLONEL PARMELEE: Questions by the Commission?

EXAMINATION BY THE COMMISSION

BY COLONEL HAUSE:

Q Could you identify the Japanese who fired the shot?

A I could not; I did not.

Q Do you recall ever having seen the accused before this morning?

A No, I didn't.

BY COLONEL BOYKIN:

Q At this time, how long had it been since the old perimeter path had been used?

A I wouldn't have any way of giving a definite date. I would say a year.

Q Was it considered in any way a line of demarcation?

A Oh, no, no.

COLONEL PARMELEE: Does the prosecution have any questions to ask based on the questions by the Commission?

LIEUTENANT DREYER: No.

LIEUTENANT GORDON: I have one question.

RE-CROSS EXAMINATION

BY LT. GORDON:

Q Did the American prisoners of war have any pseudo friendly relations with the Formosan guards in Cabanatuan?

LIEUTENANT DREYER: I object to that, sir, as immaterial, but if you think it is important, I will withdraw my objection.

LIEUTENANT GORDON: I deem it important, that is why I asked the question.

WITNESS: Will you repeat the question?

Q I said, did the American prisoners of war have any pseudo

friendly relations with the Formosan guards in Cabanatuan?

A. I know they couldn't get friendly with them, but-- I have no direct knowledge of it, but I have reason to believe that a few of them sold through the fence--sold rice through the fence. I never had money enough to buy any.

Q Would you say the American prisoners were treated in a better fashion by the Formosans than they were by the Japanese?

A No, the same pattern. They were trained by the Japanese.

BY COLONEL BOYKIN:

Q Do you know the number of this tower from which the man was shot?

A No, I don't know.

Q Do you know whether they had a numbering system?

A No, I don't believe they had a numbering system for it. It was opposite No. 2.

COLONEL PARMELEE: The witness will be excused.

(Witness Excused)

LIEUTENANT DREYER: The next witness will be Sgt. Bogie.

. THOMAS H. BOGIE

a witness for the prosecution, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY LIEUTENANT DREYER:

Q Sergeant, will you please state your name, grade and Army serial number?

A Thomas H. Bogie, 6714829, Staff Sergeant.

Q How do you spell your last name?

A B-O-G-I-E.

Q How long have you been in the Army?

A I enlisted February 17, 1935.

Q Have you been in the Army ever since?

A Yes, sir.

Q Where were you stationed prior to the outbreak of the war?

A I was with the 31st Infantry which was stationed in the Walled City, Manila.

Q What were your duties with the 31st Infantry?

A Platoon sergeant in the rifle company.

Q Did you perform any guard duties?

A Yes, sir.

Q Did you guard the American High Commissioner's Residence?

A We had a sentry at the gate, yes, sir.

Q What did you do in connection with the guard detail at the High Commissioner's Residence?

A After the guard at the post had been relieved, I would go around to see that the relief was instructed as to the special orders pertaining to the post.

Q What was your grade?

A Buck sergeant.

Q Did you know Lt. Huffcutt?

A I didn't know him personally, sir, but I have seen pictures of him posted at the guardhouse for authorized persons to leave after office hours.

Q Was his picture posted to enter after hours?

A Yes, sir.

Q Were you captured by the Japanese?

A Yes, sir.

Q Where?

A Corregidor.

Q Were you imprisoned at Cabanatuan?

A Yes, sir.

Q At what time?

A From July until November of 1942. I left there in November and I returned again the first of August, 1944.

Q Now, will you please describe to the Commission the layout of Cabanatuan Prisoner of War Camp?

A The camp is about 200 yards wide and about 800 yards long. It had three sentry posts, towers on the east side. There was a double barbed wire fence about 8 feet high around the entire post.

Q Sergeant, how were these three sentry towers spaced along the eastern most boundary?

A There was one about 100 yards from the corner and then about 300 yards down, I would say, and then at the far end about 100 yards from the end there was another one.

Q Go on with your description of the barbed wire fence.

A It was a double fence, upright poles, and poles slanting out with barbed wire between them.

Q Was it easy for a man to go through?

A No, I am positive a man could not go through without wire cutters.

Q Now, was there a road or a pathway between the barbed wire fence or in the vicinity of that barbed wire fence and outside?

A On the outside there was a path which the Japanese used to post their guards or relieve their guards. They used it outside of the fence.

Q Was there any means of ingress along the eastern barbed wire fence?

A No, sir, there was no gate or outlet or inlet at all. The only way they came in was through the main gate and when they posted their relief they went all along the camp.

Q Now, sergeant, was there a path inside the fence?

A Yes, sir, there was a path used by American guards that patrolled.

Q How far was that path inside the fence?

A I would say about 35 to 40 feet inside the fence.

Q How wide?

A Between 3 and 4 feet wide.

Q Was there anything on either side of that path?

A Yes, there was a ditch on either side due to the fact that when we constructed it we dug a ditch and built the walk way.

Q Now, proceeding westerly from those ditches and the path in between, what was the next thing?

A West of the ditches there was a row of gardens along there that enlisted men and officers had.

Q In what group or division were you?

A Well, I was in Group 2 at that time. It was in the middle

of the camp.

Q Did you see Lt. Huffcutt at Cabanatuan in August of 1944?

A Yes, sir, I did.

Q Do you remember the time when Lt. Huffcutt was shot?

A Yes, I do.

Q Now, I believe you testified that you arrived at Cabanatuan for the second time on 1 August, 1944.

A That is right, sir.

Q How long after you arrived did the shooting of Lt. Huffcutt take place?

A Well, the first week after I arrived at Cabanatuan, I worked in the corral taking care of carabaos and Brahma steer, and it happened I should say about five days after I was relieved from that job.

Q Now, did everyone work at Cabanatuan?

A Yes, sir, everybody that was able to walk worked.

Q Was Lt. Huffcutt working?

A Yes, sir.

Q Do you know what his job was?

A Well, they alternated. One day he would work on the farm, the next day on the airport building revetments.

Q Would you describe to the Commission the operation of these gardens?

A Well, in the evening they didn't have much time to work on them; from the time you got in from work, ate and stood roll call, it was dark. In the morning you didn't have no time whatsover for yourself, so generally you would knock off work from 11:30 to 12 o'clock. You would eat dinner and go back to work at 2 o'clock. In that time you would go out in the garden and pull

up weeds and harvest. The garden was not owned by one man. You would take what was ripe and cook it for the evening meal.

Q Were those gardens important?

A Yes, sir, very important.

Q For what reason?

A To keep yourself alive if you were lucky enough to have one of them.

Q Now, at what time of day was Lt. Huffcutt shot?

A After dinner, I would say between 12:30 and 1 o'clock.

Q Did you see it with your own eyes?

A I did, yes, sir.

Q Will you tell the Commission what you saw?

A I was in the vicinity of the latrine, speaking to another sergeant by the name of Rosenfelt, and conversation was about our own outfit. All of a sudden, we heard a shot. We didn't know where it came from right away. We were looking around, at the guard tower.

Q Just a moment, will you describe to the Commission the construction of the latrine at which you were sitting?

A The latrine was up on a hill on the east side of the camp and it was built up, oh I guess, 4 feet off the ground. They had dug a hole and they had piled the dirt up and it was about 4 feet high, and it was covered with timbers and they had a box built on top of that.

Q Was there a roof over the latrine?

A There was 4 poles supporting a nipa top. That was the only thing over the latrine.

Q Was there anything obstructing your view of the tower?

A No, sir.

Q Could you see Lt. Huffcutt's garden from the tower?

A Yes, sir, you could.

Q How far was Lt. Huffcutt's garden from the tower?

A I should say about 100 feet, sir.

Q How far were you from Lt. Huffcutt's garden?

A I was about 75 yards from Lt. Huffcutt's garden.

Q How far were you from the tower?

A I would say 100 yards, sir.

Q Will you go on describing what you saw at that time?

A Well, after the first shots, I seen Lt. Huffcutt. He was lying down and he was trying to get up. He was lying on his stomach and he looked like he was trying to get up and he was calling for help. At that time, we had seen the sentry up on the tower and from the time of the first shot, I guess it was about maybe 45 seconds until the second shot; after the second shot, why he fell down again. He didn't move.

Q Did you see the guard fire the second shot?

A Yes, sir, I did.

Q Did you hear the report?

A Yes, sir.

Q From what tower was that shot fired?

A That was in the middle tower.

Q What happened then?

A Japanese officer of the day, Japanese sentry and two American officers came out to see Lt. Huffcutt. They examined him and one of the officers left and 4 enlisted men came back with a stretcher and they carried him from his garden to the path, the perimeter path, around the perimeter path into the hospital area. They passed right by where I was at that time.

Q You were still at the latrine watching what was going on?

A Yes, sir.

Q What was his appearance?

A He looked like he was dead to me. They had covered him with a blanket and carried him out on the stretcher.

Q Where was he lying immediately prior to the time they moved him?

A He was lying on the inside of his garden because when they picked him up they had to cross the path.

Q Were Americans permitted to work west of that path?

A Yes, they were, yes, sir.

Q And how far west of the perimeter path was Lieutenant Huffcutt lying after the second shot?

A I would say 15 feet, sir.

Q Did the guard in the tower come down from the tower at any time?

A No, sir, I don't believe he did. I believe he was relieved about one-half hour after the incident took place.

Q Were other guards relieved at that time?

A Yes, sir.

Q Were there any stakes in that vicinity at that time?

A There had been a number of stakes, sir, marking off the boundary in which we could go, the distance between the fence and where we were allowed to go. I believe that they were about 30 feet from the main fence and that was the boundary the Americans put up to keep us away from the fence so there would be no trouble.

Q That was between the barbed wire fence and the path?

A Yes, sir.

Q And you were permitted to go up to that line of stakes?

A Yes, at one time but we were not allowed to go beyond that. They revoked the orders.

Q How far inside the perimeter was Lieutenant Huffcutt?

A The perimeter path, the gardens, came right up to the gardens.

Q There was a ditch to the west of the perimeter path?

A Yes, sir. It was about one yard wide, I should say, sir.

Q How far would you say Lieutenant Huffcutt was within

that perimeter path after the second shot?

A About 15 feet.

LIEUTENANT DREYER: That is all.

Just a moment, please, may I ask another question?

BY LIEUTENANT DREYER:

Q Do you know where Lieutenant Huffcutt was buried?

A He was buried the same day, sir, I believe in a graveyard at the far end of the camp.

Q Do you know how long he lived after the second shot was fired?

A I believe he died instantly, sir.

LIEUTENANT DREYER: That is all.

CROSS EXAMINATION

BY LIEUTENANT GORDON:

Q Besides the double wire outside fence in this vicinity was there any other wire fence?

A At that time I couldn't say, sir. I wasn't familiar.

Q I believe you were a witness for the prosecution on the General Kou case?

A Yes, I was.

Q Do you remember having this question put to you:

"Q How far was the fence?

"A There were two fences.

"Q The outside fence?

"A I would say about 50 to 60 feet."

Does that refresh your recollection any?

A That fence, sir, was to the north of the stakes I first told about. They had been put up to keep us away from the main fence.

Q How many paths were there in that vicinity at that time?

A There was one path that I remember and that was the one the perimeter guard walked on.

Q Had there ever been another path, do you recall?

A There may have, sir, but I don't recall.

Q These latrines, they were square boxes built independently of each other, is that right?

A Yes, sir. They were spread out along the east end of the camp.

Q East end of the camp?

A Yes.

Q Were they parallel to the fence?

A No, sir, they ran north and south.

Q You mean they ran at right angles?

A That is right.

Q When you were sitting on the latrine did you see Lieutenant Huffcutt in his garden?

A Yes, sir, I did.

Q What direction were you facing?

A I was facing south.

Q Did you hear any yelling at the time?

A No, sir, I didn't.

Q Again, I refer to your testimony in the General Kou case. " I don't remember what he was yelling. Then we heard the guard in the tower which was about 80 yards away from where he was, maybe 100 yards, yelling 'Kuday'. As far as I know it is like 'Hey' in Japanese."

Do you recall that testimony?

A Yes. He yelled "Kuday".

Q May I read your entire answer to the question? I will read the question first.

"Q Will you explain to the Commission what you saw?

"A It was just around noontime and I and a buddy of mine -- a Staff Sergeant -- who was in the latrine. We seen two men working in their little garden which was about as far as from here to the High Commissioner's home. It was natural to see somebody working out there, so we didn't pay any attention to it. We was talking, heard a shot. One of the men run from the garden into the barracks. One was laying on the ground and he was yelling. I don't remember what he was yelling. Then we heard the guard in the tower which was about 80 yards away from where he was, maybe 100 yards, yelling 'Kuday' as far as I know it is like 'Hey' in Japanese. I don't know what it means."

Q How long after you heard that did you hear the second shot?

A Well, it was just a matter of seconds, sir, I couldn't be exact.

Q Between the first and second shots did you see Lieutenant Huffcutt?

A Between the first and second shot?

Q Between the first and the second shot.

A He was lying down on his stomach.

Q Where was he lying?

A He was lying in his garden, sir.

Q These four enlisted men whom they called to take the body away, were they Americans?

A Yes. I believe they were corpsmen, sir.

Q How far would you say you were sitting from where the

body was at the time of the shooting?

A Oh, I would say 100 yards, roughly, sir.

LIEUTENANT GORDON: That is all, sir.

COLONEL PARMELEE: Any cross-examination by the Commission?

EXAMINATION BY THE COMMISSION

BY COLONEL HAUSE:

Q Can you identify the Japanese who fired the shot?

A No, sir, I can't.

Q Did all the latrines run north and south or were some east and west?

A They all run north and south.

Q They all did?

A Yes, sir.

COLONEL HAUSE: No more questions.

COLONEL PARMELEE: The witness is excused.

(Witness excused.)

LIEUTENANT DREYER: The prosecution rests, sir.

LIEUTENANT GORDON: The defense is ready to proceed, your Honor.

COLONEL PARMELEE: The defense may proceed.

LIEUTENANT GORDON: There is no opening statement by the defense. We call as our first witness the defendant himself.

KIN RYU RIN

called as a witness by the defense, was sworn and testified through Interpreters Osato, Motoyoshi and Baba as follows:

DIRECT EXAMINATION

BY LIEUTENANT GORDON:

Q What is your name?

A Kin Ryu Rin.

Q What is your last name?

A Rin.

Q What is your first name?

A Kin Ryu.

Q How old are you?

A Twenty-four.

Q Where were you born?

A Formosa.

Q When were you first employed by the Japanese Imperial Army?

A August, 1942.

Q In August, 1944, in what capacity were you attached to the Japanese Army?

A To guard the prisoners so that the prisoners will not escape.

Q Where were you employed to guard the prisoners?

A At Cabanatuan.

Q Do you remember during the month of August 1944 at Cabanatuan the incident of the killing of an American Second Lieutenant, an American prisoner of war?

A Yes, I do know.

Q At what time of the day did you go on guard duty?

A I went on duty at 8:00 A.M. in the morning.

Q Where were you stationed at about noon on the 11th of August 1944, the day about which I am talking?

A I was on the observation tower, guard tower.

Q Will you tell the Commission exactly what happened at that time on that day.

A Between 11:30 and 12:00 P.M., a prisoner was outside of the zone which was marked as off-limits and he was attempting to escape from there.

Q Had you ever seen this prisoner before that day?

A I did not see.

Q I show you a diagram or sketch and ask you what this is?

A This is the Cabanatuan prison where at that time the case occurred, and this is one portion of the camp.

Q Do you know who drew that sketch?

A I drew it.

LIEUTENANT GORDON: I wish to offer this sketch in evidence as Defense' Exhibit A.

COLONEL PARMELEE: Objection by the prosecution?

LIEUTENANT DREYER: Yes, sir, I do not think the proper foundation has been laid as yet for the introduction of this sketch in evidence. The defense has not shown that it is a true and accurate representation of the scene at that time. If you ask the question and get the answer, I will have no objection.

BY LIEUTENANT GORDON:

Q Does this sketch show a true and accurate picture of the place where this incident took place on August 11th, 1944?

A Yes, it is so.

LIEUTENANT GORDON: I now offer this sketch in evidence as Defense Exhibit A.

LIEUTENANT DREYER: Without conceding, of course, the accuracy of the sketch, the prosecution has no objection to

the introduction of this sketch in evidence. However, we do object and object strenuously of the legends drawn on the sketch, I don't know by whom, "Position first shot towards sky", "Position called 'halt'." Except for those two legends, the prosecution interposes no objection to the introduction in evidence.

LIEUTENANT GORDON: The defense will explain the diagram and those two positions in the diagram as it goes along.

COLONEL PARMELEE: The Commission will accept the sketch in evidence and will note the statements made by counsel qualifying its possible accuracy.

(Defense Exhibit A was received in evidence.)

BY LIEUTENANT GORDON:

Q Will you take this sketch and show me where you first saw the prisoner at whom fired?

A It is here, pointing to the little arrow here.

Q Is that near one of the latrines?

A I came up from between the first and second latrines.

Q You mean he came out?

A I was on the tower and the prisoner came out from between the first and second latrines.

Q How many shots did you fire at the prisoner?

A I fired one round.

Q Did you hit him?

A This one round hit the prisoner.

Q Did you fire any other rounds at the time?

A I will start from the beginning because I cannot get the sequence of the thing straight. The prisoner came out from between the first and second latrines and I saw him enter

into the zone which was supposed to be the off-limit zone. On the inside part of the zone, there was a shallow ditch there, and on the outer side of the zone, which was beside the road, was very deep which was used to wash out the latrines. These lines indicate the starting of the construction of the barbed wire entanglements. When the prisoner came to the embankment of the off-limit zones, I yelled to him to go away about four times, and waved my hand at him. However, the prisoner kept on walking without taking any heed. The prisoner walked across from the embankment, not in a normal pace, but in a rather rapid pace, and I yelled at him four times. I didn't care to shoot anyone, so I yelled at him. However, he did not stop, and at the same time there were many prisoners at the latrines, and they, too, were yelling at the person. Now, when the prisoners standing near the latrines yelled at the person going out, the guards in the guardhouse heard the yelling and ordered me to fire at the prisoner. The first round I did not shoot at him. I aimed into the sky and fired. However, he crossed the path which was supposed to be the path which the sentries patrolled, and the prisoner crossed about a meter over to the path and was escaping, therefore I felt that I had to shoot him or otherwise violate the orders that I have been given. Therefore I shot him.

Q Is he going on?

A I have some more. After I fired the first round at the prisoner, he fell, and rolled over and rolled into the shallow ditch which was next to the path. When the prisoner crossed over the path, I had to shoot him because it was the orders of the Japanese Army, and also the special orders of the sentinel, and if I did not shoot the prisoner, I would

have been court-martialed. However, in this case I shot the prisoner in line of duty, and therefore I was not punished. I was instructed by Lieutenant Colonel Takasaki and his subordinates that any prisoners getting on the mound, embankment, which is considered the off-limit line for the prisoners, to be shot as escaping prisoners, and on that day I also received specific instructions from the guard detachment commander. Since I am a Formosan, there has been a great amount of discrimination by the Japanese soldiers, and therefore we give out friendships with the prisoners. There have been instances where I was caught giving cigarettes to the prisoners, and was ordered to line up with the other prisoners and face each other and slap each other's cheek.

LIEUTENANT DREYER: Will you please read that answer?

(Answer read.)

INTERPRETER: Line up with the others.

LIEUTENANT DREYER: Other whom?

INTERPRETER: Guards, other soldiers.

BY LIEUTENANT GORDON:

Q How far was the prisoner from you when you first saw him?

A The distance between the latrine and the place where I first saw him, if you take a direct line, is about 16 meters, and then from there to the guard tower, it is about 50 or 60 meters.

Q Where was the prisoner when you fired your first shot? How far was he from you?

A The first shot which I fired into the sky the prisoner was about 60 meters away.

Q How far was the prisoner from you when you fired the second shot which killed the prisoner?

A Between 60 to 70 meters away. I shot him when he got onto the guard path.

Q On the date when this incident took place, and at the time it took place, how many paths were there in the vicinity?

INTERPRETER OSATO: Between these two areas here (indicating on map)?

Q Yes, how many paths were there between you and the latrines?

A There was this path which the guards walked, it shows there, and also the off-limit area which was set by the Japanese Army. There were two paths.

Q How many fences were there in that vicinity, wire fences?

A On the outside there were a double strand barbed wire fence and in this off-limit outside just on the perimiter of the off-limit area the barbed wire fence was being constructed and it did not completely go around and there was an opening here.

Q At the area where the killing took place, the prisoner had to cross both gravel paths before he reached the outside barbed wire fence, is that right?

A Yes. Crossing the second path, the body was there.

Q Do you recall making a statement recently to the Investigating Detachment in which you stated that you later heard that there were two rounds fired at the body and both had hit?

A I heard from the investigating officer that there were two wounds caused by a single bullet and I also heard this when I was still in the prisoner-of-war camp from the commanding officer also.

Q I wish to withdraw that question, Sir, I don't believe the prisoner understands what I wish to get and I will ask him that--

LIEUTENANT DREYER: The prosecution objects very strenuously to the withdrawal of any question which is already in the record. The question has been asked and it has been answered. I admit it is somewhat of a boomerang.

COLONEL PARMELEE: Does the defense feel it is not getting a response due to difficulty of translation?

LIEUTENANT GORDON: That is right, Sir.

INTERPRETER OSATO: It has been mixed up, whether when I said it was at the camp we thought when he was in the prisoner-of-war camp. What he meant was that when he was in Cabanatuan he heard that there were two wounds on the body caused by a single bullet and when he was investigated by the investigating officer he was told that there were two wounds.

LIEUTENANT DREYER: What investigating officer, Japanese or American?

INTERPRETER OSATO: That was after he was taken prisoner of war.

LIEUTENANT DREYER: War Crimes?

INTERPRETER OSATO: Yes, sir.

LIEUTENANT GORDON: You say he was getting a bit confused?

INTERPRETER OSATO: Yes, sir.

COLONEL PARMELEE: Do you desire to have the answer stand in the record?

LIEUTENANT GORDON: Yes, Sir.

COLONEL PARMELEE: Very well.

BY LIEUTENANT GORDON:

Q Who was the Sergeant of the Guard at the time this incident took place?

A Sho Hattori was the sergeant.

Q Who was the commander of the guard on that day?

A 2nd Lieutenant Kaseno was the officer.

Q Who was the acting commander of Cabanatuan on that day, do you know?

A Major Takasaki.

Q Who was Lieutenant Toshino?

A Lieutenant Toshino was the commander of the security unit and on that day when the incident occurred Major Takasaki was in Manila and Lieutenant Toshino was acting commandant.

Q Was there any official inquiry made and at which you attended, of this incident by the Japanese officers at Cabanatuan?

A I have not attended any inquiry.

LIEUTENANT GORDON: That is all.

COLONEL PARMELEE: The Commission will recess for ten minutes.

(Short recess.)

CROSS EXAMINATION

BY LT. DREYER:

Q Rin, did you ever see prosecution's Exhibit No. 2?

A Yes, I have.

Q In whose handwriting is prosecution's Exhibit No. 2?

A I wrote this.

Q You wrote that yourself, didn't you?

A Yes, that is so.

Q I was there when you wrote it; do you remember that?

A Yes, I do know.

Q I didn't hit you, did I?

A No.

Q I didn't beat you?

A No.

Q I didn't threaten you in any way?

A No.

Q And you gave that statement of your own free will?

A Yes.

Q And you said what you did say because it was true, didn't you?

A Since I do not understand the Japanese language very well I did not understand some of the questions and there have been some errors here. There are some errors here.

Q Now, you testified at great length in response to the questions of Lt. Gordon, haven't you?

A Yes, through the interpreter I got many of the questions clarified; clarified most the answers also.

Q Now, your direct examination here today, was that conducted in the Formosan language?

A This morning was in Japanese.

Q And all of the questioning that you have been subjected to has been through a Japanese interpreter in the Japanese tongue, isn't that correct?

A Yes, it is so.

Q And you have no difficulty in understanding the court interpreter, do you?

A Since I do not understand it very clearly, I frequently asked you several times to reword the questions.

Q And the questions were reworded in Japanese?

A Yes, it is so.

Q You write Japanese, don't you?

A I can write Japanese but I cannot write anything which is delicate or requires profound thinking.

Q You read Japanese, don't you?

A I can read Japanese, but I do not understand the meaning very clearly.

Q Now, when I asked you the questions at the time we wrote prosecution's Exhibit No. 2 , you wrote down my questions with your own hand in Japanese, didn't you?

A Yes, I took it down here, but there are places where I do not understand the words very clearly.

Q You wrote down the questions in Japanese and you wrote down the answers as you understood the questions in Japanese, isn't that true?

A Yes, that is so.

Q It was all very friendly, wasn't it?

A Since there is a racial difference in the presence of a white man, many times I feel at loss and I cannot find words that are adequate to express myself.

Q Now Rin, will you look at question 7 and your answer to question 7? Will you read that question and answer to the Commission?

(Question and answer read aloud by the accused)

Now I just want you to read what you wrote; nothing else.

(Question and answer read)

Q Translate it.

INTERPRETER: "How many rounds hit the prisoner?" That is the question. The answer is:"Later on I was told that two rounds hit the prisoner."

LIEUTENANT GORDON: Just one moment. Is that the exact translation?

INTERPRETER: English syntax will not fully apply to the Japanese syntax and in this case here, a person is denoted, this phrase--which denotes a third person or superior ordering him to sit there and listen to what he has to say, but by this you cannot say who the person was or what rank the person held. It just said that two rounds hit the prisoner. That is what he was told later on.

LIEUTENANT GORDON: Is the word 'prisoner' there?

INTERPRETER: If you want the word 'prisoner' left out, I will.

LIEUTENANT GORDON: Pardon me, sir, if the Commission please, the reason I question the interpretation is not how many rounds, it is the 'prisoner'. I want to point out there is difficulty in translating.

LIEUTENANT DREYER: Everybody knows that.

LIEUTENANT GORDON: If we are going to question the defendant's ability to translate from English to Japanese and vice versa, I want to give the prisoner the benefit of the

doubt.

LIEUTENANT DREYER: I want to give the prisoner every benefit, but there is no question about whom we are talking. Is it the contention of the defense that no rounds hit?

LIEUTENANT GORDON: No, I am not talking about the rounds but about the translation. I am trying to show that even though the question is read by the defendant to the official interpreter, the official interpreter doesn't interpret it accurately.

LT. DREYER: Just a moment, let me answer your argument. I think the Commission knows fully well no foreign language is translated in identical words by two interpreters, but the substance is the same.

LIEUTENANT GORDON: We are having a translation to questions which were put to the defendant at some time by the prosecution's investigating detachment. I think the translation should agree to the translation in evidence.

INTERPRETER: Sir, I don't think any two interpreters can translate a document and have the same wording.

LIEUTENANT DREYER: You are sworn as an interpreter. Is the translation which is given and sworn to by Takaki an acceptable translation?

INTERPRETER: Yes, sir, it is.

BY LIEUTENANT DREYER:

Q Now when you wrote this prosecution's Exhibit No. 2 you didn't say anything about two wounds, did you?

INTERPRETER: Will you please repeat the question.

(Question repeated)

A I did not write.

Q Now, were you friendly to the American prisoners?

A Yes, I was friendly.

Q You always treated them with kindness, courtesy and consideration?

A Yes, that is so.

Q Riu, did you ever beat any American prisoners?

A No, I haven't.

Q Are you absolutely sure that you never, during the entire time you were a guard at Cabanatuan, beat a prisoner?

A Yes, it is certain that I did not beat any prisoners.

Q Do you recall once having ordered a prisoner to pick up large beans and that prisoner only picked up small beans?

A My specific mission is not to let the prisoners escape, and what happens in the camp I do not know.

LIEUTENANT DREYER: I move to strike that answer as not responsive.

COLONEL PARMELEE: Are you going to press for a more responsive answer?

LIEUTENANT DREYER: Yes, sir.

COLONEL PARMELEE: Let the record stand and repeat the question.

Q Now, I will ask you one more time. Do you remember you were in charge of the prison detail, that you asked an American prisoner to pick up large beans, and although you asked him to do that, he only picked up small beans? You remember that?

A I do not remember.

Q All right. Do you remember once that you had a 100-man detail and that you missed one prisoner out of that detail, and you looked for him and you found him asleep. Do you remember that?

A I do not remember.

Q Do you remember certain Japanese non-commissioned officers named Nagai, Fujita, and Mishikawa?

A Yes, sir, I do know.

BY LIEUTENANT DREYER:

Q Did they ever tell you to beat prisoners?

A These non-commissioned officers had never told me directly to beat a prisoner.

Q Did they ever tell you indirectly to beat a prisoner?

A My chief duty is not to let the prisoners escape and therefore they do not give me orders directly and also they have men who are assigned to the maintenance of the camp and they are under these non-coms.

Q Well, sometimes you worked on the farm detail, didn't you?

A I went there as a guard.

Q And did your orders require you to prohibit loafing on the job by American prisoners?

A My job is to see that no prisoners escape and therefore we had no relations with the running of the camp.

Q Did not Lieutenant Okamoto and Major Takasaki tell you to beat prisoners who refused to work or obey orders?

A I was never told to beat prisoners. During the evening, during roll call, the guards, those who were assigned to the running of the camp, are present and at that time those who were in charge of details and running of the camp were instructed to beat prisoners. However, we just guard the prisoners so that they do not escape and we had no connection with those orders.

Q Now, Rin, tell the Commission the truth. Did you really think on August 11, 1944, that Lieutenant Huffcutt was trying to escape? Do you really believe that and did you believe that at that time?

A Yes, I really thought that Lieutenant Huffcutt was going to escape.

Q Now, let us look at that picture. This happened at about noon, is that correct?

A Yes, it was from about 11 to 12 noon.

Q The sun was high in the sky?

A Yes.

Q Your guard tower overlooked the garden?

A Yes, I could see it.

Q Between Lieutenant Huffcutt and the garden there was a double barbed wire fence?

A Yes, there was.

Q Was there another fence between the double barbed wire fence and his garden?

A Yes, there was one but it wasn't completely finished.

Q Rin, was there a gate in the double barbed wire fence that was wide open at that time?

A No.

Q No gate. How high was that double barbed wire fence?

A It is about the height of that door there.

LIEUTENANT DREYER: Let the record show that the witness indicated a height of about 8 feet.

Q You were up in the tower all the time, weren't you?

A The duties vary and there are days when I don't go there and days when I go there.

Q But on that day you were up in the tower?

A Yes.

Q And you had a rifle with you, didn't you?

A Yes, I had a rifle.

Q And in that rifle were live bullets, weren't there?

A Yes.

Q And the prisoners knew that, didn't they?

A That I cannot say.

Q If they looked up in the tower they could see you up there, couldn't they?

A Yes.

Q And you could see them?

A Yes.

Q Now, Rin, I am not the only American officer who has spoken to you about this case, am I?

A Yes, there are others, too.

Q Do you remember Lieutenant Owens who spoke to you at Branch Camp No. 5, Nichols Field, about this case?

A That is the Mariquina Camp No. 5?

Q Camp No. 5, right. And do you remember that he had a Nisei interpreter with him by the name of James Iwanaga.

A I don't remember the name but there was one interpreter with him.

Q And they asked you about this case about five days before Christmas of last year. Do you remember that?

A I do not remember clearly when it was but it was the middle of December.

Q Well, do you remember that they wrote a lot of things down and when they got to the end it was translated to you and you signed it? Do you remember that?

A I do remember but there were many places in which I could not understand the Japanese.

Q Well, then, let me show you this piece of paper and ask you if that is your signature at the end of it.

A Yes, that is my name.

LIEUTENANT DREYER: I ask that it be marked as Prosecution

Exhibit No. 3 for identification.

BY LIEUTENANT DREYER:

Q And did you write your initials on each page of Prosecution's Exhibit No. 3 for identification?

A Yes, I wrote that.

Q Now, neither the interpreter nor the officer who was with him on that day beat you or hit you or threatened you, did they?

A They did not strike me but theythreatened me.

Q They what?

A They threatened me.

Q Do you remember that the second sentence of Prosecution's Exhibit No. 3 says -- rather, the first and second sentences read as follows: "I, Rin Kin Ryu, make the following statement of my own free will to Second Lieutenant C. M. Owens and T/4 James Iwanaga. No threats or promises have been made to me." And then the third sentence: "I realize that I do not have to make this statement and that it may be used in court against me." And then at the very end it says: "This statement has been read to me in Japanese by T/4 James Iwanaga. I understand it and swear it is true." Do you remember that?

A Because I could not understand the language very clearly I don't feel that I understood everything exactly.

Q Now, Rin, I asked you a very simple question. I asked you to tell the Commission whether you were able to recall making the statement that no threats were made, no promises were made, and that you realized the statement could be used against you in court, and that you swore it was true. Don't you remember that? Tell the truth.

A Yes, I remember about the fact that I did not have to

make the statement, that it might be used in court against me but at that time the investigator was quite severe with me. At that time the investigator was very severe in pressing me by saying that what I was saying was not the truth. He told me that they had investigated the rules of the Japanese Army and the rules did not state that escaping prisoners were to be shot or those who did or loafed in the field were to be struck and he was the only one who said that what I was saying was not the truth.

COLONEL PARMELEE: The Commission will recess until 1330 hours this date.

(Whereupon, at 1145 hours, 29 April 1946, the Commission recessed to convene at 1330 hours, 29 April 1946.)

A F T E R N O O N S E S S I O N

The Commission convened pursuant to noon recess at 1330 hours at Court No. 1, High Commissioner's Residence, Manila, P. I.

COLONEL PARMELEE: The Commission is in session.

LIEUTENANT DREYER: With the exception of Colonel Supple; the accused, the Commission, defense counsel and prosecution are present and ready to proceed.

KIN RYU RIN

the accused, on the stand at the time of the noon recess, resumed the stand and was further examined and testified as follows through the official interpreter:

LIEUTENANT DREYER: Rin, may I remind you that you are still testifying under oath?

(Interpretation made to the accused)

CROSS EXAMINATION (Cont'd)

BY LIEUTENANT DREYER:

Q Now, after Lt. Huffcutt was shot, did Lt. Toshino talk to you about the shooting?

A No, he did not.

Q Did you tell the Nisei interpreter and the Lieutenant who interrogated you at branch camp No. 5, this, and I quote: QCaptain Toshino, captain of the guards, told me in the presence of all the guards, that I had shot too fast, that the killing was not necessary, that in the future, everything should be done to avoid killing the prisoners"?

A No, he did not.

Q Now, then, Rin, when I asked you whether there were any beatings or threats made at the time you signed Prosecution's

Exhibit No. 3, I recall, I think, that you testified there were some threats made. Now, do you recall the last sentence of that statement: "I understand it and swear it is true", after which you signed your name?

A That is not so. I was threatened and the investigating officer called me and told me that I was not telling the truth and he fingered his revolver and I figured at that time it would be foolish to be killed and I did what the investigator ordered me to do.

Q You did, however, sign the statement which contained the sentence, "I understand it and swear it is true"?

A I don't know whether this statement is right or wrong, but I signed it because I was threatened by the investigating officer.

LIEUTENANT DREYER: I offer prosecution's Exhibit 3 in evidence.

COLONEL PARMELEE: Objections by the defense?

LIEUTENANT GORDON: The defense interpreter claims that the translation of the last answer was not correct.

LIEUTENANT DREYER: In what respect, sir?

LIEUTENANT GORDON: I would rather take it up with the interpreter before I bring it to the attention of the Commission.

(Discussion between Lt. Gordon and the Interpreter)

LIEUTENANT GORDON: It is all right, sir. It is not necessary to have it explained further.

COLONEL PARMELEE: The defense is satisfied?

LIEUTENANT GORDON: The defense is satisfied.

COLONEL PARMELEE: Is there objection to this exhibit?

LIEUTENANT GORDON: No objections sir.

COLONEL PARMELEE: It will be so admitted into evidence.

(Prosecution's Exhibit 3 received in evidence)

BY LIEUTENANT DREYER:

Q Rin, where was Lt. Huffcutt's body after you fired the first shot?

A I fired the first shot in the air so Lt. Huffcutt was still walking towards the exterior.

Q What did he do after you fired the first shot?

A He continued walking towards the exterior.

Q When you fired the second shot, was he on the ground?

A I fired the second round towards him and he was about one meter from a narrow ditch, and he fell over in a shallow ditch near the guard path.

Q Did you examine his body?

A No, I did not. It was still time for me to be on duty and no relief had come for me so I could not get down from the observation post.

Q Were you in the observation post when they took his body away?

A Yes, I was.

LIEUTENANT DREYER: That is all.

RE-DIRECT EXAMINATION

BY LIEUTENANT GORDON:

Q When you were interviewed by the American officer and the interpreter in December at branch camp No. 5, where, in that camp was the interview held?

A I was interviewed in the food storage room, near the barracks.

Q Was that inside or outside the wire fence which surrounded the compound?

A This is outside of the wire fence.

Q Did the officer, American officer, have a side arm with him?

A Yes, he had a revolver.

Q Did the officer and the interpreter stay together at all times during the interview?

A Yes, they stayed together.

Q Did either of them leave the room at any time during the interview?

A Yes, during the interview the interpreter went to the latrine. During that time the investigating officer fingered his revolver and frightened me.

Q Was there anybody else present at the the interview?

A I do not recall.

LIEUTENANT DREYER: What was that last question?

(Last question read back)

LIEUTENANT GORDON: No further questions, sir.

COLONEL PARMELEE: Re-cross examination?

LIEUTENANT DREYER: No, sir.

COLONEL PARMELEE: Questions by the Commission?

EXAMINATION BY THE COMMISSION

BY CAPTAIN HENDRICKS:

Q Referring again to your sketch, defense Exhibit "A", will you again point out this double apron fence? (to interpreter) Will you have him come here and do it?

A (pointing) This is the outer barbed wire fence and there is about one meter between the two fences.

Q Now, will you indicate on there the location of the prisoner's garden?

A It is within this area (pointing) between the barracks and the latrine. Do you want this drawn?

Q Yes.

(Witness drawing on diagram)

INTERPRETER: He said it extends from the latrine, between the latrine and all the way out.

Q There is no prisoners' gardens east of the latrine?

A. There is no garden area east of the latrine. It is all grass which is about 2 inches tall.

Q Can you indicate on here the garden that belonged to the American that was killed?

A That I do not know.

CAPTAIN HENDRICKS: That is all.

COLONEL PARMELEE: (to the accused) All right, resume the stand and be seated.

COLONEL HAUSE: Did you go on duty in the guard tower after you shot the American?

A Yes, that is so.

COLONEL HAUSE: No further questions.

LIEUTENANT DREYER: I have some more questions.

RECROSS EXAMINATION

BY LIEUTENANT DREYER:

Q What have you got in your left hand?

A That is a sketch.

Q Now, is that a copy of Defense Exhibit A?

A Yes, that is the same as what the officer is holding in his hand.

Q Now, look at the position of the sentry tower on Defense Exhibit A. Was that sentry tower inside the double barbed wire fence or is it outside the double barbed wire fence?

A It is near the inside of the barbed wire.

Q Now, let me go over that again so there is no mistake.

Is it your contention that on August 11, 1944, the tower or observation post in which you were stationed was within the prison compound?

A Yes, it was within the camp.

Q So you could have, after the shot was fired, descended from the tower and walked over to where Lieutenant Huffcutt was lying without passing through any barbed wire fence, is that true?

A Yes, I could go to Lieutenant Huffcutt without passing the barbed wire fence as there isn't any.

Q What is this shaded portion between the barbed wire

fence and inscription "Position first shot toward sky".

A This is a small pile of little rocks, made of gravel.

Q Is that the path on which the perimeter guard would march?

A Yes, that is the path that the guard walks.

Q Where did the Japanese sentry march when your relief came?

A They come from the guardhouse on this path here. (Indicating on map.)

Q The same path on which the Americans marched?

A This is path that the Americans walked, the American guards walked and at that time there were no American guards walking the posts.

LIEUTENANT GORDON: Let the record show that the witness indicated that the inner path is the one used by the American guards.

A (Continued) At the time the sentry tower was outside of this barbed wire when the guard on this sentry tower was guarding the outside, they used American guards on this path but when the guard tower was moved inside the barbed wire they did away with the American guards.

Q Was the sentry tower moved inside the barbed wire after Lieutenant Huffcutt was shot?

A It was moved inside before Lieutenant Huffcutt was killed.

Q So that when you and all the other guards were on duty you all marched inside the prison compound with your weapons. Is that true?

A Yes, we walked the inner path.

Q And the guardhouse was inside the prison compound, is that correct?

A Yes, it was inside.

LIEUTENANT DREYER: That is all.

LIEUTENANT GORDON: No further questions, sir.

COLONEL PARMELEE: Are there any questions by the Commission?

(No response.)

COLONEL PARMELEE: The witness is excused.

(Witness excused.)

LIEUTENANT GORDON: At this time I want to include in the record a stipulation entered into between the counsel for the prosecution and the counsel for the defense that requests for the apprehension of Lieutenant Toshino, acting commander at Cabanatuan in August 1944, and Sergeant Hattori Sho, Sergeant of the Guard on that day, have been made by the defense and the fact that they have not been found shall not be considered prejudicial to the defendant.

LIEUTENANT DREYER: The prosecution has no objection.

COLONEL PARMELEE: The stipulation agreed to by the prosecution is approved by the Commission.

LIEUTENANT GORDON: I call as the next witness for the defense Lieutenant Satoru Suchiro.

SATORU SUEHIRO

called as a witness by the defense, having been first duly sworn, was examined and testified as follows through Interpreters Osato, Motoyoshi, and Baba:

DIRECT EXAMINATION

BY LIEUTENANT GORDON:

Q What is your name?

A Satoru Suehiro.

Q On August 1944 what was your rank in the Japanese Imperial Army?

A Second Lieutenant in Medical Corps.

Q When did you join the Japanese Army?

A 30 July 1941.

Q When did you come to the Philippine Islands?

A 24 December 1941.

Q Were you ever on duty at Cabanatuan prisoner-of-war camp?

A Yes, I have.

Q When did you first come to the Cabanatuan prisoner-of war camp?

A I came to Cabanatuan the latter part of July 1942 and left in October.

LIEUTENANT DREYER: Of what year?

A 1942.

Q (By Lieutenant Gordon) Do you remember an incident at Cabanatuan in the month of August 1944 which involved the killing --

In 1942, did you say?

A July, 1942 until October 19 -- I arrived in July of 1942 and assumed my position at the prison camp in October

1942 until the present.

LIEUTENANT DREYER: The present?

Q (By Lieutenant Gordon) Were you there in August 1944?

A Yes, I was.

Q Do you remember an incident in Cabanatuan in the month of August 1944 which involved the killing of an American officer, a prisoner of war?

A Yes, I recall the incident.

Q Do you recall what day in August it occurred?

A I think it was the 10th or 11th of August.

Q At about what time of day?

A Shortly before noon.

Q Do you recall examining the corpse of the American officer?

A Yes, I did.

Q When you examined the corpse, what did you find?

A When I examined the body he was dead. There was a wound.

Q Where was the wound?

A The wound was from -- it entered the left arm into the lower abdomen, it went through the left arm and lodged in the lower abdomen. There was only one hole.

Q There was only one hole? Where?

A In the abdomen.

Q How do you know that the bullet lodged in the abdomen?

A Since there was only one wound in the lower abdomen I assumed that the bullet had lodged in there.

Q How soon after the incident of the killing did you arrive on the scene?

A About ten minutes later.

Q Was the person who had been shot, dead at the time?

A Yes, the officer was already dead.

Q In your opinion as a doctor, how soon could a bullet wound such as this in the abdomen cause death?

A It all depends on the way the bullet hits, but in this case--and also depends on the health of the person--but in this case it was between two to five minutes.

Q Where did you find the body when you arrived?

A It was in a shallow ditch.

Q I show you a copy of defense Exhibit "A" and ask you to point out to the Commission where you found the body?

A This narrow ditch (pointing to this mark here)

LIEUTENANT GORDON: Let the record show that the witness pointed to the ditch on the diagram, on the easterly side of the outside path.

Q When you arrived at the body, who was there?

A When I arrived, 2nd Lt. Kaseno was there.

Q Was there anybody else there?

A After Lt. Kaseno and I arrived, then M/Sgt. Hata arrived.

Q After you examined the body and found he was dead, what did you order done with it?

A Later, 1st Lt. Toshino arrived and then they brought a stretcher and carried the body to the morgue.

Q Do you know whether the body was examined by the American medical officers?

A At the morgue Lt. Col. Craig examined the body.

Q I believe you said that the bullet went through the American officer's left arm and entered the abdomen.

LIEUTENANT DREYER: I object to that; I don't believe the witness testified to that. I believe he testified there was a hole in the left arm and a hole in the abdomen, but I don't think he attempted to give an opinion as to the course of the bullet. If you want to refer back to the testimony --

LIEUTENANT GORDON: I will withdraw that question.

Q How many bullet wounds did you find in the body upon your examination?

A There were two wounds on the left arm where the bullet entered and went out and also a wound in the abdomen.

Q In your opinion, do you think it was the same bullet that caused both wounds?

LIEUTENANT DREYER: I object to that question on the ground that the witness has not been qualified as a ballistics expert.

COLONEL PARMELEE: Objection sustained.

Q From the course of the bullet which entered the arm and the course of the bullet into the abdomen, would you say that the wounds had been caused by the same bullet?

LIEUTENANT DREYER: I object to that on the grounds there is no evidence that the bullet was the same bullet that lodged in the abdomen.

LIEUTENANT GORDON: I am trying to qualify that. He is a medical man and I think he can tell from the type of wounds in the body.

COLONEL PARMELEE: State your objection.

LIEUTENANT DREYER: I am perfectly willing to have him testify as to the symptoms observed at the time of his examination

of Lt. Huffcutt's body, but I do not think we should hear his opinion as to the course of the bullet.

LIEUTENANT GORDON: I think he is the medical officer who examined the body and can testify as to the course of the bullet.

LIEUTENANT DREYER: If he can testify that the bullet went through the arm and entered the abdomen, I withdraw the objection. I don't want to impede your defense. Go ahead and ask him anything.

LIEUTENANT GORDON: Will the reporter please repeat the last question to the witness.

(Question read)

COLONEL PARMELEE: The prosecution withdraws objection to that question?

LIEUTENANT DREYER: Yes, sir

COLONEL PARMELEE: Very well, it will be answered.

A In my opinion, a single bullet entered into the left arm and also the abdomen.

Q Had the body been moved from its original place when you arrived there, as far as you know?

LIEUTENANT DREYER: I object; he couldn't possibly know the answer. He testified he came to the scene about ten minutes after the shooting.

Q Did the deceased bleed extensively because of the wound?

A Yes, he bled a lot due to the wound.

Q Was there any blood stains on the ground about the corpse?

A In the shallow ditch where the body was found, there was a lot of blood stains.

LIEUTENANT GORDON: That is all; no further questions.

CROSS EXAMINATION

BY LIEUTENANT DREYER:

Q Now, Lieutenant, you have no interest in the outcome of this case, do you?

COLONEL PARMELEE: The Commission will recess for 10 minutes.

(Short recess)

COLONEL PARMELEE: The Commission is in session.

A As for the result of this case, I don't think that I have any personal concern.

Q (By Lieutenant Dreyer) Your only desire is to tell the truth, is that right?

COLONEL PARMELEE: Will the reporter read the last answer?

(Answer referred to was read by the reporter.)

Q (By Lieutenant Dreyer) Your only desire is to tell the truth?

A Of course.

Q Now, tell us a little something about the layout of the Cabanatuan prisoner-of-war camp. Was there a double barbed wire fence running along the eastern boundary of the camp?

A Yes, there was a double wire fence on the east side of the camp.

Q Was there such a fence in August of 1944?

A Yes, there was. It is shown in this sketch.

Q Where was the sentry tower, inside or outside the double barbed wire fence?

A It was inside of the outer barbed wire.

Q Inside of the outer barbed wire fence. Was there an inner barbed wire fence?

A There was an inner barbed wire fence in the camp.

Q In August 1944?

A Yes, that is so.

Q Was that inner barbed wire fence between the gardens and the outer barbed wire fence?

A By the inner barbed wire fence I meant the inner barbed wire fence of the two barbed wire fences on the outside.

Q Let me start all over again.

Correct me if I am wrong.

At the easternmost boundary of Cabanatuan prison camp was a double barbed wire fence, is that correct?

A Yes, that is correct.

Q Now, within that double barbed wire fence was a sentry tower, is that correct?

A Yes, that is so.

Q Then, still proceeding in towards the center of the camp there is another barbed wire fence, is that true?

A Yes, there is one on the inside.

Q So that to go from the tower inside the camp one would have to pass through a barbed wire fence, is that correct?

A Yes, you could not enter unless you crossed a barbed wire fence. However, the fence, the inner fence on the east side was not complete.

Q Now, Lieutenant, you testified about these bullet wounds. Exactly where was the first bullet hole in the prisoner's arm?

A On the outside of the left arm. It was a little above the left joint.

Q What was the diameter of the hole on the outside of the left arm above the joint?

A The wound on the outside of the left arm was about one centimeter.

Q Was there a wound on the inside of the upper left arm?

A Yes, there was a wound on the inside of the left arm.

Q What was the diameter of that wound?

A About one and a half centimeters.

Q What was the diameter of the wound in the abdomen?

A Approximately one centimeter.

Q One centimeter. Now, you are a graduate physician, is that true?

A Yes, that is so.

Q Is it true that in the upper arm there is a large bone?

A Yes.

LIEUTENANT DREYER: That is all.

COLONEL PARMELEE: Is there any re-direct?

LIEUTENANT GORDON: I have one more question, sir.

REDIRECT EXAMINATION

BY LIEUTENANT GORDON:

Q Did the bullet which went through the arm hit the bone in the arm?

A Yes, it hit the bone.

LIEUTENANT GORDON: That is all.

COLONEL PARMELEE: Any re-cross examination?

LIEUTENANT DREYER: No, sir.

COLONEL PARMELEE: Are there any questions by the Commission?

COLONEL HAUSE: I have some.

EXAMINATION BY THE COMMISSION

BY COLONEL HAUSE:

Q How many dead did you examine each day?

A Do you mean dead from bullet wounds?

Q Bullet wounds and other causes.

A Just once in a while, not every day.

Q Why do you remember this case so clearly?

A After I became a prisoner of war, about the latter part of November 1945 an investigating officer interviewed me in regard to this case and I have recalled the facts of this incident since that time.

Q As a physician, what vital spot was hit to kill so quickly?

A Because it hit the abdominal artery.

Q What was the length of time between the shooting and the examination?

A About ten minutes.

Q Did you examine the corpse in the region of the heart and the head?

A Yes, I did.

Q Did you find any bullet holes?

A No, I did not.

COLONEL HAUSE: No further questions.

COLONEL PARMELEE: Any further questions by the prosecution or the defense based upon the questions by the Commission?

LIEUTENANT GORDON: No further questions, Sir.

LIEUTENANT DREYER: One more.

RECROSS EXAMINATION

BY LIEUTENANT DREYER:

Q Did you witness the shooting?

A No, I did not.

LIEUTENANT DREYER: That is all.

COLONEL PARMELEE: The witness is excused.

(Witness excused.)

LIEUTENANT GORDON: The defense calls as its next witness Lt. Col. Iku Takasaki.

IKU TAKASAKI

a witness for the defense, being first duly sworn, was examined and testified as follows through the official interpreter:

DIRECT EXAMINATION

BY LIEUTENANT GORDON:

Q What is your name?

A Iku Takasaki.

Q In the month of August, 1944, what was your rank in the Japanese Imperial Army?

A Major.

Q When did you first come to Cabanatuan prison camp in 1944?

A About April 20, 1944, I went to Cabanatuan for about one night.

Q Were you assigned to Cabahatuan in August 1944?

A Around 28 August I was appointed as acting commandant.

Q When you came to Cabanatuan, did you receive a report of the shooting of an American, 2nd Lieutenant prisoner of war which happened on or about the 10 or 11th of August, 1944?

A I heard about the incident before I took my position.

Q Did Lt. Toshino make any report to you of the killing?

A I received an official report after I assumed my position on 28 August.

Q What was contained in that official report?

LIEUTENANT DREYER: Objection, if the Commission please. As I understand it, this witness is about to testify what was said to him by an investigating officer to whom a report

was made about the killing; that neither this witness saw it, neither Lt. Toshino who made the report saw it, and at the time the incident occurred, this witness was not in command of Cabanatuan. I can't see how that is competent.

LIEUTENANT GORDON: This is an official report that was made to the commandant of the prison camp. I think it should be accepted for its probative value.

COLONEL PARMELEE: It will be so accepted.

A The report stated that the prisoner of war was passing over the boundary line and the sentry seeing this called out for him to halt three or four times, but the prisoner of war did not take heed, so the sentry fired one shot in the air as a warning, but still the prisoner of war did not take heed, so he was shot.

Q Did you speak to an American colonel or lieutenant colonel about this incident after you were assigned to Cabanatuan?

A Yes, I did.

Q What was the name of that American officer?

A Lt. Colonel Wilson.

Q Had you ever come in contact with Colonel Wilson before you met him at Cabanatuan?

A Yes, I had met him previously.

Q When had you met Colonel Wilson previously?

A When I was group commander at the Davao colony, for about three months, I met Lt. Col. Wilson and became acquainted with him quite well.

Q Now, when you arrived at Cabanatuan, did Col. Wilson come to see you?

LIEUTENANT DREYER: I object to all this, sir; it is utterly immaterial and irrelevant; I can't see any purpose in the inquiry.

LIEUTENANT GORDON: You may not see it now, sir, but I am going to connect it up with some very important relationship concerning Lt. Huffcutt.

COLONEL PARMELEE: You feel you are laying a foundation for some important testimony here?

LIEUTENANT GORDON: I think so, which evidence was given to this witness by Col. Wilson, an American prisoner of war.

COLONEL PARMELEE: Very well, proceed.

A Yes, I met him.

Q Did you discuss with Col. Wilson the incident of the Huffcutt killing?

A I did.

Q What did Col. Wilson tell you about it?

A Lt. Col. Wilson said that 2nd Lt. Huffcutt had been ill and was not quite sane and he was constantly being watched by fellow prisoners, and Lt. Col. Wilson said that it appeared as though during the short moment when the fellow prisoner watching Lt. Huffcutt left him, he went through this fence.

Q Did you make any official inquiry or investigation about the Huffcutt killing after you came to Cabanatuan?

A The day after I assumed my position, I was escorted by Lt. Toshino and I made an investigation of the actual scene of the incident.

Q What I mean is, did you ever hold a hearing and question Kin Ryu Rin or American prisoners who might have seen the incident?

A I had heard previously the causes of the incident, so

I did not conduct an inquiry.

LIEUTENANT GORDON: No further questions.

CROSS EXAMINATION

BY LIEUTENANT DREYER:

Q Colonel, did you see this incident with your own eyes?

A I was in Manila and did not see the incident.

Q Did Lt. Toshino see it?

A That I do not know.

Q After the incident occurred and Lt. Toshino reported to you, did you talk to the guard about it? Did you talk to Kin Ryu Bing?

A I do not recall.

Q Do you mean you do not recall talking to a guard, or you do not recall the guard's name? Which?

A I did not know the name or know his face, and I don't think that I talked to him.

Q Would you swear under oath that you didn't talk to him?

A I can't recall very well.

Q Look at that man over there and I ask you whether you ever talked to him or not about this case.

A I do not know.

Q You do not know.

Now, this incident happened -- you testified before, you were in command at Cabanatuan. Is that a correct version of that testimony?

A Yes, that is right.

Q Were you ever interrogated by an officer of the War Crimes Investigating Detachment about this case?

A Yes, I was interrogated.

Q Did you sign a statement before T/4 James Iwanaga, Second Lieutenant Claude M. Owens, and Second Lieutenant Fujio J. Asano?

A I do not recall the names but I remember that I signed a statement in regards to the Huffcutt incident.

Q That is right, you were questioned about it right here in the High Commissioner's Stockade, weren't you?

A Yes, I think it was here.

Q And after the statement was written out it was translated to you by a Nisei interpreter, wasn't it?

A I think that was it.

Q And you signed your name, didn't you?

A Yes.

Q And that is your signature, isn't it?

A Yes, that is so.

Q And you said over your signature "I swear that I have heard the above statement read to me by T/4 Iwanaga, that I understand it and that it is true." You said that then,

didn't you?

A Yes, that is so.

LIEUTENANT DREYER: I offer this statement in evidence. This will be Prosecution Exhibit No. 4.

LIEUTENANT GORDON: I would like to object. The witness is on the stand, he can be cross examined; if he said anything different now it can be brought out in open court.

LIEUTENANT DREYER: I will withdraw my offer of this document in evidence at the present time and renew the offer at some later point. Will you mark it for identification only as Prosecution Exhibit No. 4?

COLONEL PARMELEE: It will be so marked.

Q (By Lieutenant Dreyer) Now, Colonel Takasaki, did you say in this statement: "About one month after I took charge of Cabanatuan prison I went to Manila on business. When I returned Captain Toshino told me that three days before, during my absence, Second Lieutenant Huffcutt, an American prisoner who had been suffering from hysteria, had been seen by a guard past the line of markers inside of the prison fence." Did you say that?

(Interpreter and witness engage in long conversation.)

LIEUTENANT DREYER: Now, there is no necessity for a long winded discourse from the witness and I want the record to show that there has been a lot of palaver back and forth. I asked a question which required a simple yes or no answer. I asked him whether he said that or not and I want a yes or no answer.

COLONEL PARMELEE: I ask that the interpreter press for a brief answer, either yes or no.

A I do not recall making such a statement.

Q (By Lieutenant Dreyer) All right. Now, do you recall making this statement: "When I heard about this I told the guard whose name I cannot recall, that he should in the future do everything possible to prevent escapes before the killing of prisoners"?

(Long conversation ensues between interpreter and witness.)

Q Did you say it or didn't you?

A I do not remember.

Q I now offer Prosecution Exhibit 4 in evidence.

LIEUTENANT GORDON: The same objection is made this time, if the Commission please. There is no showing how this statement was obtained, the foundation, or under what circumstances.

LIEUTENANT DREYER: The man has identified his signature, he has admitted that he wrote his signature following: "I swear that I have heard the above statement read to me by T/4 Iwanaga, that I understand it and it is true", and it is absolutely contradictory of everything he has said here today.

COLONEL PARMELEE: The statement in question will be admitted as Prosecution Exhibit No. 4.

(Prosecution Exhibit No. 4 was received in evidence.)

The Commission will take a ten-minute recess.

(Short recess.)

Q Now, Colonel Takasaki, where were you stationed immediately prior to coming to Cabanatuan as commandant?

A I was the commandant of the Davao Colony.

Q And also commandant of the sub-branch camp at Lasang Airfield?

A It is only the Colony.

Q When were you relieved as commandant at Davao?

LIEUTENANT GORDON: I object to this question, sir, on the grounds that it is immaterial, irrelevant and incompetent to the issues involved. Now, I think if it is allowed to continue, the witness should be warned of his rights.

LIEUTENANT DREYER: The purpose of this inquiry, if the Commission please, is to establish the date on which this man came to Cabanatuan. He testified on direct examination he took over at Cabanatuan on 28 August 1944, or 17 days after the killing occurred. It is my belief he is putting himself at Cabanatuan after the killing occurred, to avoid responsibility. I want to show he was commandant as he said in the statement admitted in evidence as Prosecution Exhibit 4 at the time this killing occurred.

LIEUTENANT GORDON: Whether he was in Cabanatuan at the time, he testified, and it was accepted by the prosecution, that he was not at Cabanatuan on the date the incident took place, and I think that is sufficient for this case.

LIEUTENANT DREYER: It is a question of credibility, sir.

COLONEL PARMELEE: I was going to say, if you are trying to establish credibility, go ahead and proceed.

LIEUTENANT GORDON: I think he should be told of his rights, and that what he testifies can be used against him

in further trials and that he need not say anything that might incriminate him.

LIEUTENANT DREYER: This witness is an alien enemy, and is not entitled to the protection of the Fifth Amendment of the Constitution of the United States. Now will you reread that question, please?

(Question read.)

A August 8th.

Q To what were you assigned on August 8th?

A I was taken by air to Malay-Palay and then to Lipa, where the plane landed and did not continue from there that night.

Q Now, you haven't answered my question. You testified that you were relieved as commandant on August 8th, and I asked you to what you were assigned after that time.

A Since the Colony was closed, I returned to Manila to report

Q Was Lieutenant General Kou your commandant?

A Yes.

Q When you arrived in Manila did General Kou give you another assignment?

A At that time I was not assigned.

Q When did you receive your next assignment?

A In April I received instructions that since the Colony was to close in about two weeks, and after that he was to assume his duty at Cabanatuan.

LIEUTENANT DREYER: (to interpreter) Are you sure you have that answer correct? It doesn't make sense.

A So, at that time I did not receive any instructions from General Kou.

Q Let me put it this way: Prior to August 8, 1944 did you receive orders that immediately upon the closing

of the prison camp at Davao, that you were to assume command at Cabanatuan?

A I had heard that that was the expectation.

LIEUTENANT DREYER: That is all. No further questions, sir.

COLONEL PARMELEE: Redirect?

LIEUTENANT GORDON: No further questions.

COLONEL PARMELEE: Questions by the Commission?

COLONEL HAUSE: I have one.

EXAMINATION BY THE COMMISSION

BY COLONEL HAUSE:

Q Can you point out the one who did the killing?

INTERPRETER OSATO: The killing of Lieutenant Huffcutt?

COLONEL HAUSE: Yes, the killing in question.

A Yes, I can.

LIEUTENANT DREYER: Indicating the accused.

COLONEL HAUSE: That is all.

COLONEL PARMELEE: Let the record show that the witness pointed out the accused as the killer of Lieutenant Huffcutt.

LIEUTENANT GORDON: I would like the record to show that the defendant is the only other Japanese prisoner of war in the room at the time.

LIEUTENANT DREYER: Isn't the man on his right a Japanese prisoner of war?

LIEUTENANT GORDON: This man here?

LIEUTENANT DREYER: Yes.

LIEUTENANT GORDON: I don't really know whether his status is that of a prisoner of war or civilian internee.

I withdraw my request.

COLONEL PARMELEE: Very well.

LIEUTENANT DREYER: One more question and then I will subside.

RECROSS EXAMINATION

BY LIEUTENANT DREYER:

Q Colonel, at the time the shooting occurred, was the sentry tower inside the double barbed wire fence or outside the double barbed wire fence?

A I wasn't there so I do not know.

Q When you arrived was the guard tower inside the double barbed wire fence or outside the double barbed wire fence?

A It was inside of the fence.

Q And the guardhouse, too?

A The guardhouse was inside of the outer fence.

Q Then there was a barbed wire fence between the guardhouse and the prison compound, is that right?

A There was an inner line.

Q Barbed wire?

A Yes.

Q Was there an inner line of barbed wire between the guard tower and the prison compound?

A Yes, there was an inner line.

Q Of barbed wire?

A Yes.

LIEUTENANT DREYER: That is all.

LIEUTENANT GORDON: This description of the compound that you just gave is as you saw it as you arrived on the 28th of August at Cabanatuan, is that so?

A Yes.

LIEUTENANT GORDON: No further questions.

COLONEL PARMELEE: The witness is excused.

(Witness excused.)

LIEUTENANT GORDON: The defense rests, your Honor.

LIEUTENANT DREYER: The prosecution has but one rebuttal witness.

COLONEL PARMELEE: The prosecution may call its witness.

JAMES IWANAGA

called as a witness by the Prosecution, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY LIEUTENANT DREYER:

Q State your name, rank and serial number.

A T/4 James Iwanaga, 37710490.

Q What is your duty or assignment?

A Presently I am court interpreter at War Crimes.

Q What were you doing in November and December of 1945?

A I was personal interpreter assigned to an interrogating officer from the War Crimes Investigating Detachment.

Q Who was that investigator?

A Lieutenant Claude Owens.

Q Were you investigating atrocities at Cabanatuan prison camp?

A Yes, sir.

Q During the course of that investigation did you interrogate Japanese prisoners with respect to the killing of Lieutenant Robert Huffcutt?

A Yes, sir.

Q Did you interrogate Kin Ryu Rin?

A Yes, sir.

Q Had you interrogated prisoners about the killing of Lieutenant Huffcutt before you interrogated Kin Ryu Rin?

A Yes, sir.

Q What did those prisoners tell you about the killing of Lieutenant Huffcutt?

A Well, before, we wanted to find out who definitely

killed Lieutenant Huffcutt and I think we interrogated about 10 to 15 other prisoners concerning this case and they all stated that Kin Ryu Rin was on guard that day and shot him and Kin Ryu Rin was about the last man we interrogated in that case.

Q Did you ask him if he had shot Lieutenant Huffcutt?

A Yes, sir.

Q What did he say?

A At first he denied it completely but we showed him statements taken from other prisoners concerning this case and also told him that if he didn't come out with it we would bring the rest of the prisoners in front of him and it was about 10 to 15 minutes later that he told us he did shoot Lt. Haffcutt.

Q Who was present when you interrogated Kin Ryu Rin?

A Just me and Lieutenant Owens.

Q Was he wearing a sidearm at that time?

A No, he wasn't.

Q How can you be so sure he wasn't?

A Well, any interrogating officer knows they are not allowed to carry sidearms interrogating any prisoners and Lieutenant Owens was an army officer so that I don't think he did.

Q Where did this take place?

A At Branch Camp 5, American Engineer Division.

Q Was there a place to deposit sidearms as you entered the prison compound?

A Well, he usually placed it in the orderly room, that is the common practice, sir.

Q Have you ever, during the entire time you were with Lieutenant Owens as his personal interpreter, seen him carry a weapon into that prison compound?

A No, I did not.

Q Did you also participate in the interrogation of Major Takasaki?

A Yes, I did.

Q Did Takasaki tell you during that interrogation that the killing of Lieutenant Huffcutt occurred while he was in command?

A Yes, he did.

Q Did he tell you that he spoke to Kin Ryu Rin about it?

A I can't remember that, sir.

Q Will you tell me what practice you and Lieutenant Owens pursued before a Japanese prisoner signed his name to a statement that you took from him?

A Well, first we, I would tell the prisoner that the statement he is about to make, to be sure it is the truth and after the statement was made we usually take down whatever the statement that he said in writing and I would tell him that the statement that he just made is made to us without any duress, or any threat, and if it is the truth we will ask him to sign it and they usually do sign it.

Q Do you translate it to him word for word?

A Yes, I translate it to them word for word.

Q Did you do that in the case of Kin Ryu Rin, and again in the case of Takasaki?

A Yes.

Q Did any one of them make any objection to your translation?

A No, they did not.

Q Was that translation a true and correct translation of your questions?

A Yes.

LIEUTENANT DREYER: No further questions.

CROSS EXAMINATION

BY LIEUTENANT GORDON:

Q Do you recall where the examination of Kin Ryu Rin took place at this prisoner of war camp?

A Yes, I do.

Q Where was that?

A They had a tent outside the compound.

Q It was outside the compound?

A Yes, it was.

Q And couldn't he have carried his weapon there?

A But --

Q Answer the question.

A No, but it was outside the compound.

Q It was outside the compound?

A It was outside the compound where he went to talk to the prisoners.

Q Isn't it possible that Lt. Owensmight have walked to the tent?

A Before interrogating the prisoners, he must go into the orderly room and get permission and then they would bring the prisoner out to you.

Q Then, on occasion, couldn't Lt. Owens have gone directly into the tent and sent you in for the prisoner?

A He never did that, sir.

Q You don't recall him doing it on this occasion?

A No, sir.

Q Do you recall leaving the tent at any time during the interview so that Lt. Owenswas alone with Kin Ryu Rin?

A Yes.

Q And how long were you away would you say?

A It must have been two or three minutes, maybe four.

Q Where did you go?

A To the latrine.

Q You have interrogated a great number of Japanese prisoners of war, haven't you?

S Yes, sir.

Q Do you have any difficulty in making them understand what you are trying to get from them?

A No, sir.

Q They answer all your questions directly just as you are answering mine?

A Yes, sir.

LIEUTENANT GORDON: That is all

RE-DIRECT EXAMINATION

BY LIEUTENANT DREYER:

Q When you commence an interrogation of a Japanese prisoner, do they always answer your questions truthfully or in the same way that they answer them when you finish?

A I don't get that, sir.

LIEUTENANT DREYER: I will withdraw that question. No further questions.

LIEUTENANT GORDON: No further questions.

COLONEL PARMELEE: Questions by the Commission? Appear to be none. The witness is excused.

(Witness excused)

LIEUTENANT DREYER: If the Commission please, I am somewhat perturbed by the nature of this cross examination. I don't like it to appear in the record that Lt. Owens is the type

of an American Army officer that would go around brandishing pistols under the nose of Japanese prisoners and I think it would be fair to him that he be given an opportunity to come into court and testify as to his version of what happened during his examination of Kin Ryu Rin. I think it is clear enough, but I think it might be proper for Lt. Owens to give his account of what occurred. I will call him unless the defense stipulates that if called, he will testify that he did no such thing.

COLONEL PARMELEE: Does the defense so desire to stipulate?

LIEUTENANT GORDON: Well I think the record shows that the interpreter who accompanied Lt. Owens has, shall we say, cleared him?

LIEUTENANT DREYER: Yes, sir, but there is a gap of four or five minutes, and I don't want the stigma to be put on a war crimes officer.

LIEUTENANT GORDON: I don't think, if there is any stigma to be attached, that this is the proper place for it, and I will withdraw any remarks of mine which intimated that Lt. Owens threatened the prisoner at the time of the interrogation.

COLONEL PARMELEE: That satisfies the prosecution?

LIEUTENANT DREYER: Yes, and the prosecution rests.

COLONEL PARMELEE: The defense has no further witnesses?

LIEUTENANT GORDON: No further witnesses, and the defense rests.

COLONEL PARMELEE: The Commission would like to recall Colonel Ball as a witness.

JOHN H. BALL

being recalled as a witness for the Commission, was reminded that he was still under oath, and was further examined and testified as follows:

LIEUTENANT DREYER: Colonel Ball, you are reminded that you are still under oath.

Colonel Ball: Yes.

EXAMINATION BY THE COMMISSION

BY CAPTAIN HENDRICKS:

Q Will you hand the colonel a copy of Defense Exhibit "A", please. Considering this sketch, Colonel Ball, will you qualify it as poor, good, excellent, or whatever you think it is?

A I think I can draw a better one on the blackboard right here. I think it is very poor. I don't think it gives much information at all as to the location of the paths and the buildings. There is no information.

Q Will you attempt to point out to us any large errors and qualify them for us, if possible?

A The sentry tower, starting on the east side—this, I assume—oh, it is marked south, there, and that corner was the southeast corner of the entire compound, not as shown here. The barbed wire fence, which is shown here in curlicues, double barbed wire fence, was about one meter apart. The sentry tower and path on which the sentries were changed, the Japanese sentries, was outside the barbed wire fence. The path of the perimeter guard, the American guard, was inside, approximately 30 or 35 feet from that fence. That is--inside of that, at that particular position, was a ditch about-at that point, about 4 feet deep. That was the main drainage ditch from the latrines; line of latrines all drained into that and it made a curve going out under the barbed wire fence. I am not positive whether it was north or south of the tower. The tower was very close. There the ditch was very deep outside. Now, on the inside,

of that drainage ditch, where the latrines were, was the original perimeter guard path which was no longer used. Now, taking on this chart here, the line, the broken line described to indicate the position or the direction of travel of the man, the gardens were up inside of that second--the unused path.

Q These are the latrines?

A Yes, that line were the latrines. They were on a general line with that path. Now, the boundary line farther up in this same group, group 2, was not the path, but was this deep drainage ditch. As we come further down, there isn't any drainage ditch and the path itself becomes the boundary line of this old path and later the new path. Now, certainly we didn't have any Japanese guards walking around inside the barbed wire fence. On several occasions, when there was a large attack there, guards were placed inside the fence, Japanese guards, and they were strengthened; they had on the outside around these towers machine gun emplacements that the Americans helped build it. They were on the outside of the fence, not on the inside. This is not a good picture nor does it give a good idea of the lay of the land.

CAPTAIN HENDRICKS: That is all I want.

COLONEL PARMELEE: The witness is excused.

(Witness Excused)

COLONEL PARMELEE: Has the defense a closing argument?

LIEUTENANT GORDON: The defense will waive its closing argument.

LIEUTENANT DREYER: And so will the prosecution.

COLONEL PARMELEE: The Commission will now recess until

1330 hours, 30 April 1946, and will consider the case in the meantime.

Whereupon, at 1605 hours, 29 April 1946, the Commission recessed to be reconvened at 1330 hours, 30 April 1946.

R E S T R I C T E D

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

AG 000.5 (5 Dec 45) LS

APO 500
5 December 1945

SUBJECT: Regulations Governing the Trials of Accused War Criminals.

TO : Commander-in-Chief, United States Army Forces, Pacific, APO 500
Commanding General, Sixth Army, APO 442
Commanding General, Eighth Army, APO 343
Commanding General, XXIV Corps, APO 235

The following rules and regulations will govern the trials of persons, units and organizations accused as war criminals.

1. ESTABLISHMENT OF MILITARY COMMISSIONS.

a. General Persons, units and organizations accused as war criminals will be tried by military commissions to be convened by, or under the authority of, the Supreme Commander for the Allied Powers.

b. Number and Types. The Commissions will be established dependent upon the number, nature of the offenses involved and the offenders to be tried. Such commissions may include, among others, international military commissions consisting of representatives of several nations or of each nation concerned, appointed to try cases involving offenses against one (1) or more nations.

2. JURISDICTION.

a. Over Persons. The military commissions appointed hereunder shall have jurisdiction over all persons charged with war crimes who are in the custody of the convening authority at the time of the trial.

b. Over Offenses.

(1) Military commissions established hereunder shall have jurisdiction over all offenses including, but not limited to, the following:

[illegible] Prosecution Exhibit No. 2a [illegible]

(a) The planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

(b) Violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory; murder or ill-treatment of prisoners of war or internees or persons on the seas or elsewhere; improper treatment of hostages; plunder of public or private property; wanton destruction of cities, towns or villages; or devastation not justified by military necessity.

(c) Murder, Extermination, enslavement, deportation and other inhuman acts committed against any civilian population before or during the war, or persecutions on political, racial or religious grounds in execution of, or in connection with any crime defined herein, whether or not in violation of the domestic laws of the country where perpetrated.

(2) The offense need not have been committed after a particular date to render the responsible party or parties subject to arrest, but in general should have been committed since or in the period immediately preceding the Mukden incident of September 18, 1931.

3. MEMBERSHIP OF COMMISSION:

a. Appointment. The members of each military commission will be appointed by the Supreme Commander for the Allied Powers, or under authority delegated by him. Alternates may be appointed by the convening authority. Such alternates shall attend all sessions of the commission, and in case of illness or other incapacity of any principal member, an alternate shall take the place of that member. Any vacancy among the members or alternates, occurring after a trial has begun, may be filled by the convening authority, but the substance of all proceedings had and evidence taken in that case shall be made known to that new member or alternate in open court before the trial proceeds.

b. Number of Members. Each commission shall consist of not less than three (3) members.

c. Qualifications. The convening authority shall appoint to the commission persons whom he determines to be competent to perform the duties involved and not disqualified by personal interest or prejudice, provided that no person shall be appointed to hear a case which he

personally investigated, nor if he is required as a witness in that case. A commission may consist of Army, Navy or other service personnel, or of both service personnel and civilians. One specially qualified member shall be designated as the law member whose ruling is final insofar as concerns the commission on an objection to the admissibility of evidence offered during the trial.

d. Voting. Except as to the admissibility of evidence, all rulings and findings of the commission shall be by majority vote, except that conviction and sentence shall be by the affirmative votes of not less than two-thirds (2/3) of the members present.

e. Presiding Member. In the event that the convening authority does not name one of the members as the presiding members, the senior officer among the members of the commission present shall preside, or such other member as the senior officer may designate.

4. PROSECUTORS.

a. Appointment. The convening authority shall designate one or more persons to conduct the prosecution before each commission. Where offenses involve nationals of more than one nation, each nation concerned in the discretion of the convening authority, may be represented among the prosecutors.

b. Duties. The duties of the prosecutors are:

(1) To prepare and present charges and specifications for reference to a commission.

(2) To prepare cases for trial and to conduct the prosecution before the commission of all cases referred for trial.

5. POWERS AND PROCEDURE OF COMMISSIONS:

a. Conduct of the Trial. A commission shall:

(1) Confine each trial strictly to a fair, expeditious hearing on the issues raised by the charges, excluding irrelevant issues or evidence and preventing any unnecessary delay or interference.

(2) Deal summarily with any contumacy or contempt, imposing any appropriate punishment therefor.

(3) Hold public sessions except when otherwise decided by the commission.

(4) Hold each session at such time and place as it shall determine, or as may be directed by the convening authority.

b. Rights of the Accused. The accused shall be entitled:

(1) To have in advance of trial a copy of the charges and specifications clearly worded so as to apprise the accused of each offense charged.

(2) To be represented, prior to and during trial by counsel appointed by the convening authority or counsel of his own choice, or to conduct his own defense.

(3) To testify in his own behalf and have his counsel present relevant evidence at the trial in support of his defense, and cross-examine each adverse witness who personally appears before the commission.

(4) To have the substance of the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them.

c. Witnesses. The Commission shall have power:

(1) To summon witnesses and require their attendance and testimony under penalty, to administer oaths or affirmations to witnesses and other persons and to question witnesses.

(2) To require the production of documents and other evidentiary material.

(3) To delegate to the Prosecutors appointed by the convening authority the powers and duties set forth in (1) and (2), above.

(4) To have evidence taken by a special commissioner appointed by the commission.

d. Evidence.

(1) The commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or such as in the commission's opinion would have probative value in the mind of a reasonable man. The commission shall

apply the rules of evidence and pleading set forth herein with the greatest liberality to achieve expeditious procedure. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted:

(a) Any document irrespective of its classification which appears to the commission to have been signed or issued by any officer, department, agency or member of the armed forces of any government without proof of the signature or of the issuance of the document.

(b) Any report which appears to the commission to have been signed or issued by the International Red Cross or a member thereof, or by a doctor of medicine or any medical service personnel, or by an investigator of intelligence officer, or by any other person whom the commission considers as possessing knowledge of the matters contained in the report.

(c) Affidavits, depositions or other signed statements.

(d) Any diary, letter or other document, including sworn or unsworn statements, appearing to the commission to contain information relating to the charge.

(e) A copy of any document or other secondary evidence of its contents, if the original is not immediately available.

(2) The Commission shall take judicial notice of facts of common knowledge, official government documents of any nation, and the proceedings, records and findings of military or other agencies of any of the United Nations.

(3) A commission may require the prosecution and the defense to make a preliminary offer of proof, whereupon the commission may rule in advance on the admissibility of such evidence.

(4) If the accused is charged with an offense involving concerted criminal action upon the part of a military or naval unit, or any group or organization, evidence which has been given previously at a trial resulting in the conviction

of any other member of that unit, group or organization, relative to that concerted offense, may be received as prima-facie evidence that the accused likewise is guilty of that offense.

(5) The findings and judgment of a commission in any trial of a unit, group, or organization with respect to the criminal character, purpose or activities thereof shall be given full faith and credit in any subsequent trial, by that or any other commission, of an individual person charged with criminal responsibility through membership in that unit, group or organization. Upon proof of membership in that unit, group or organization convicted by a commission, the burden shall be on the accused to establish by proof any mitigating circumstances relating to his membership or participation therein.

(6) The official position of the accused shall not absolve him from responsibility, nor be considered in mitigation of punishment. Further, action pursuant to order of the accused's superior, or of his government, shall not constitute a defense, but may be considered in mitigation of punishment if the commission determines that justice so requires.

(7) All purported confessions or statements of the accused shall be admissible without prior proof that they were voluntarily given, it being for the commission to determine only the truth or falsity of such confessions or statements.

e. Trial Procedure. The proceedings at each trial will be conducted substantially as follows, unless modified by the commission to suit the particular circumstances:

(1) Each charge and specification will be read, or its substance stated, in open court.

(2) The presiding member shall ask each accused whether he pleads "Guilty" or "Not Guilty".

(3) The prosecution shall make its opening statement.

(4) The presiding member may, at this or any other time, require the prosecutor to

state what evidence he proposes to submit to the commission, and the commission thereupon may rule upon the admissibility of such evidence.

(5) The witnesses and other evidence for the prosecution shall be heard or presented. At the close of the case for the prosecution, the commission may, on motion of the defense for a finding of not guilty, consider and rule whether the evidence before the commission supports the charges against the accused. The commission may defer action on any such motion and permit or require the prosecution to reopen its case and produce any further available evidence.

(6) The defense may make an opening statement prior to presenting its case. The presiding member may, at this or any other time, require the defense to state what evidence they propose to submit to the commission, whereupon the commission may rule upon the admissibility of such evidence.

(7) The witnesses and other evidence for the defense shall be heard or presented. Thereafter, the prosecution and defense may introduce such evidence in rebuttal as the commission may rule admissible.

(8) The defense, and thereafter the prosecution, shall address the commission.

(9) The commission thereafter shall consider the case in closed session and unless otherwise directed by the convening authority, announce in open court its judgment and sentence, if any. The commission may state the reasons on which the judgment is based.

f. Record of Proceedings. Each commission shall make a separate record of its proceedings in the trial of each case brought before it. The record shall be prepared by the prosecutor under the direction of the commission and submitted to the defense counsel. The commission shall be responsible for its accuracy. Such record, certified by the presiding member of the commission or his successor, shall be delivered to the convening authority as soon as possible after the trial.

g. Sentence. The commission may sentence an accused, upon conviction, to death by hanging or shooting,

imprisonment for life or for any less term, fine or such other punishment as the commission shall determine to be proper. The commission may also order confiscation of any property of a convicted accused, deprive that accused of any stolen property or order its delivery to the Supreme Commander for the Allied Powers for disposition as he shall find to be proper or may order restitution with appropriate penalty in cases of default.

h. Approval of Sentence. No sentence of a military commission shall be carried into effect until approved by the officer who convened the commission, or his successor. Such officer shall have authority to approve, mitigate, remit in whole or in part, commute, suspend, reduce or otherwise alter the sentence imposed, or (without prejudice to accused) remand the case for rehearing before a new military commission; but he shall not have authority to increase the severity of the sentence. No sentence of death shall be carried into execution until confirmed by the Supreme Commander for the Allied Powers. Except as herein provided, the judgment and sentence of a commission shall be final and not subject to review.

6. RULE MAKING POWER.

Supplementary Rules and Forms. Each commission shall adopt rules and forms to govern its procedure, not inconsistent with the provisions hereof, or such rules and forms as may be prescribed by the convening authority or by the Supreme Commander for the Allied Powers.

By command of General MacARTHUR:

H.W. ALLEN,
Colonel, A.G.D.,
Asst Adjutant General.

R E S T R I C T E D

A CERTIFIED TRUE PHOTOSTAT COPY:

John R. Fleming

JOHN R. FLEMING
2nd Lt, ORD

Statement of RIN KIN RYU

1. Were you at Cabanatuah in August 1944?

   Yes.

2. Were you a guard at that time?

   Yes.

3. On August 11, 1944, did you shoot 2nd Lt. HUFFCUTT?

   Yes, I shot him.

4. Did you shoot him with a rifle?

   Yes.

5. Where were you at that time?

   I was standing guard on the 2nd shift of the 1st observation post.

6. How many rounds did you fire?

   Two rounds.

7. How many rounds hit?

   I later heard that the two rounds both hit.

8. Did you fire both rounds from the observation post?

   Yes.

9. After you fired on him, how long did it seem that he lived?

   He seemed to have died immediately.

10. What was your rank at that time?

    I was a civilian guard attached to the army.

I swear that this statement was made of my own free will and that there were no threats whatsoever.

/s/ Rin Kin Ryu

USA vs. KIN RYU RIN
Prosecution Exhibit No. 2
29 April 1946

A F F I D A V I T

COMMONWEALTH OF THE PHILIPPINES)
) SS
CITY OF MANILA)

KENICHI J. TAKAKI being duly sworn deposes and says:

That he is a Technician 3rd Grade, Serial No. 39935169 in the Army of the United States and that he is a Japanese translator assigned to Allied Translator and Interpreter Service and that he is attached to the War Crimes Investigating Detachment.

That he has translated the attached questions and answers of RIN KIN RYU from Japanese into English, and that the foregoing translation is a true and correct translation of said questions and answers.

Kenichi J. Takaki
KENICHI J. TAKAKI, T/3, 39935169
Translation Section
War Crimes Investigating Detachment

Sworn before me this 6½ day of March, 1946.

Austin F. Walter
AUSTIN F. WALTER
2d Lt., MI

A CERTIFIED TRUE COPY:

John R. Fleming
JOHN R. FLEMING
2nd Lt, ORD

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9. After you fired on him, how long did it seem that he lived?

   He seemed to have died immediately.

10. What was your rank at that time?

    I was a civilian guard attached to the army.

I swear that this statement was made of my own free will and that there were no threats whatsoever.

/s/ Rin Kin Ryu

A F F I D A V I T

COMMONWEALTH OF THE PHILIPPINES)
) SS
CITY OF MANILA)

KENICHI J. TAKAKI being duly sworn deposes and says:

That he is a Technician 3rd Grade, Serial No. 39935169 in the Army of the United States and that he is a Japanese translator assigned to Allied Translator and Interpreter Service and that he is attached to the War Crimes Investigating Detachment.

That he has translated the attached questions and answers of RIN KIN RYU from Japanese into English, and that the foregoing translation is a true and correct translation of said questions and answers.

Kenichi J. Takaki
KENICHI J. TAKAKI, T/3, 39935169
Translation Section
War Crimes Investigating Detachment

Sworn before me this 6th day of March, 1946.

Austin F. Walter
AUSTIN F. WALTER
2d Lt., MI

A CERTIFIED TRUE COPY:

John K. Fleming
JOHN K. FLEMING
2nd Lt, ORD

A F F I D A V I T

COMMONWEALTH OF THE PHILIPPINES)
) SS
CITY OF MANILA)

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KENICHI J. TAKAKI, T/3, 39935169
Translation Section
War Crimes Investigating Detachment

Sworn before me this 6th day of March, 1946.

Austin F. Walter.
AUSTIN F. WALTER
2d Lt., MI

A CERTIFIED TRUE COPY:

John R. Fleming
JOHN R. FLEMING
2nd Lt, ORD

Reference: Files 77, 78, 93, 99
Cabanatuan Prison

Branch Camp #5
20 December 1945

I, RIN KIN RYU, make the following statement of my own free will to 2d Lt. C. M. Owens and T/4 James Iwanaga. No threats or promises have been made to me. I realize that I do not have to make this statement and that it may be used in court against me.

I am 24. My home is in Taiwan, Taichu Shi, Kokan 172. I am a civilian attached to the Japanese Army.

In August, 1942 I arrived in the P. I. as part of a transportation unit. This unit was assigned to us to work. In September 1942 the unit, about 600 men, was sent to Cabanatuan Prison to be trained as guards. After two months training we went to work as guards at the Prison.

Concerning the killing of American prisoners, the only killing I know about happened when Major Takasaki was in charge of the prison in 1944. I was on guard duty one day at Post #1. Sgt. HATTORI was Sgt. of guards. I do not know who was corporal of guards. This post was a tower above the 3' high barbed wire fence which enclosed the prison - the tower being midway between two corners of the Prison. About 15 meters inside the prison had been fixed a line of wooden stakes, one foot high about 15' apart. They ran parallel to the outer fence. They had been set up a few weeks before the following incident took place. A rough, gravel foot path ran roughly parallel to the line of stakes. It twisted to some extent so that in places the path was inside the stake line, and at other places it was outside the stake line. The prisoners had a vegetable patch which was just inside the line of stakes. Some scattered vegetables were growing on the outside of the stake line.

Before the stakes had been set, the prisoners were allowed to walk all along the footpath, but not to cross it towards the fence. The footpath was the boundary for the prisoners. When the stakes were set up, our instructions from the guard company commander were that the prisoners should not be allowed to cross the stakes. The line of stakes replaced the footpath as the boundary.

While I was on guard duty, I saw a prisoner, Lt. HUFFCUT walking slowly directly towards the lines of stakes from the interior of the prison. He was walking in the vegetable patch. When he came within a few meters of the stake line I shouted to him, "No Good" - about four times. The Americans then shouted to him. I do not know what they said. He did not look up at me nor did he look back at them. Instead, while I was shouting he turned to the right and walked along a line roughly parallel to the line of stakes, but about two meters outside of the line of stakes. I did not think he was trying to escape. Instead I thought he was looking for vegetables. However, he was outside the line of stakes. The Americans were shouting. I was shouting and was excited. I think some one in the next guard house was shouting. I do not know who it was. It might have been another guard like myself, Ro Ko O. I believe the person said, "What are you waiting for, hurry up and shoot." The prisoner's back was to me. He was then about 50 meters away and still walking parallel to the stakes.

/s/ RKR

USA vs. KIN RYU RIN
Prosecution Exhibit No. 3
29 April 1946

I fired and missed. I fired a second round and hit him. I did not see where the body fell I was so excited. However, later after the body was removed I saw blood stains just outside the line of stakes.

Captain TOSHINO, commander of the guards, told me in the presence of all the guards that I had shoot too fast, that the killing was not necessary, that in the future everything should be done to avoid killing the prisoners. Major TAKASAKI later told me the same thing. I was not punish.

A few days after this killing an order came from H.Q. that the prisoners should not be allowed closer than one meter to the line of stakes.

I shot the prisoner because my orders were to not allow prisoners outside the line of stakes. I thought he was outside the line of stakes.

Concerning beatings of Americans by the guards I saw a mimeographed order from Lt. OKAMOTO, a guard company commander that if any prisoner refused to work or obey orders, to beat him. This order had OKAMOTO's name at the bottom. Later when TAKASAKI replaced Major IWANAKA as prison commander I saw the same order with TAKASAKI's name at the bottom. I also recall one day when TAKASAKI came into the farm on horseback. He told some of us guards that if prisoners did not work, to beat them.

I recall only two times beating prisoners. The first was when I had ordered a prisoner to pick large beans but he would pick only small ones so I hit him with my fists. I did not knock him to the ground. The second time was when I missed one man out of my 100 men detail. I found him sleeping. I slapped him in the face three times.

I saw all the supervisors of the farm beat prisoners, particularly bad were AIHARA, YOSHINAGA, KINUGASA. NUTA beat prisoners occasionally. Lt. YAMASAKI the farm officer witnessed many of them beatings. He would not interfere, rather he would just laugh at the beatings.

I was ordered by these Japanese non-coms on about three different occasions to beat American prisoners who were loafing: Sgts. NAGAI, FUJITA, and MISHIKAWA. I beat the specified prisoners with my hands.

I thought at the time it was wrong to beat them. However I beat them anyway because of orders.

This statement has been read to me in Japanese by T/4 James Iwanaga. I understand it and swear it is true.

/s/ RIN KIN RYU

WITNESSED:
/s/ James Iwanaga
/s/ Claude M. Owens 2d Lt., INF.

RIN is at Branch Camp #5, Manila. His detention has been requested.

CERTIFIED TRUE COPY:

Douglas E. Allis

DOUGLAS E. ALLIS
1st Lt., INF

High Commissioner's Stockade
Manila, P. I.
16 November 1945

I, Lt. Col. Iku TAKASAKI, make the following statement of my own free will to 2d Lt. Claude M. Owens, U.S. Inf. and T/4 James Iwanaga, U.S. Army interpreter. No threats or promises have been made to me. I realize that I do not have to make this statement and that it may be used in Court against me.

I was placed in charge of both the East and West sections of Cabanatuan Prison on 27 August 1944.

As commanding officer of the Prison, I was responsible for the conduct of the Japanese guards towards the American prisoners. I made Capt. Toshino captain of the guards. He was succeeded in December, 1944 by 1st Lt. Ito when Toshino escorted a shipment of prisoners from Cabanatuan to Japan. It was my responsibility to see that Toshino and Ito properly supervised the guards. To carry out these responsibilities, I made daily inspections of the prisoners living quarters, mess, and farms - sometimes secretly. On no occasion did I see or hear of any prisoner being mistreated in any way by the guards. No cases of beatings ever came to my attention. Had there been such beatings, my inspections should have disclosed them. Since my inspections did not disclose them, apparently my inspections were not thorough enough, if the beatings and mistreatment actually took place. If the beatings occurred, the guards who did the beatings, the captain of the guards, I as commanding officer of the Prison, Lt. General SHIGH KO as commanding officer of all prisons in P.I., Lt. General Shigeno as commanding officer of the staff organization, and Lt. General KURODA, Supreme Commander of the P.I. should all be punished. For it is a violation of Japanese military law to beat or mistreat in any way prisoners of war. And the chain of command would call for the punishment of every person in the chain.

In about October, 1944 I received an order to safeguard the Prison against Filipino bandits who in other sections of the P.I. had been raiding stores of supplies. To comply with this order, I asked for volunteers among the prisoners to build machine gun emplacements. About ten prisoners volunteered and worked for about one week to construct two machine gun emplacements.-- each to hold three guns. These were never used to my knowledge. However, since it was my responsibility to protect the Prison from any invaders and to use all weapons in such defense, I would have ordered these guns used against American troops who attacked the prison, had such an attack ever taken place. I realize that using prisoners of war to build military installations is against Japanese military law, but I felt that breaking the law was justified by the circumstances.

In about December, 1944 Captain Ishikawa, adjutant of the Shigemi Armored Brigade requested permission from me to use the west part of the Prison as a tank farm. There were no prisoners in that part at the time. That part was separated from the east part by about 300 yards, the headquarters building and the guards quarters. I consented. I did not know such would violate military law. Even had I known this, I would have consented since the battalion adjutant had made the request. From that time until I left Cabanatuan in January 7, 1945 about six tanks were kept at the prison in huts at night. They would leave in the day time.

About one month after I took charge of Cabanatuan Prison I went to Manila on business. When I returned, Captain Toshino told me that three days before, during my absence, 2d Lt. Maffett, an American

USA vs. KIS RYU RIN
Prosecution Exhibit No. 4
30 April 1946

High Commissioner's Stockade
Manila, P. I.
16 November 1945

I, Lt. Col. Ibu TAKASAKI, make the following statement of my own free will to 2d Lt. Claude M. Owens, U.S. Inf. and T/4 James Iwanaga, U.S. Army interpreter. No threats or promises have been made to me. I realize that I do not have to make this statement and that it may be used in Court against me.

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About one month after I took charge of Cabanatuan Prison I went to Manila on business. When I returned, Captain Toshino told me that three days before, during my absence, 2d Lt. Ruffent, an American

USA vs. KIN RYU RIN
Prosecution Exhibit No. 4
29 April 1946

prisoner who had been suffering from hysteria, had been seen by a guard pass the line of markers inside the prison's fence. The prisoners had been told they should never pass the line of wooden markers which was about 30 yards inside the prison fence. The guard ordered him three times to halt. Huffcut continued to approach the fence. The guard fired one shot in the air. Huffcut continued towards the fence. The guard then fired at and hit Huffcut, killing him. When I heard about this, I told the guard whose name I cannot recall, that he should in the future do everything possible to prevent escapes before killing the prisoners. I then issued an order that prisoners should stay three yards within the line of markers. The prisoners had small gardens, but they were all inside the markers.

In about April, 1944 Lt. General Ko, in charge of all prison camps in P.I. told me I was to be made commanding officer at Cabanatuan; that he wanted mistreatment of prisoners which had been going on there stopped. He did not tell me who was responsible for such mistreatments nor what they consisted of.

I swear that I have read the above statement correctly to Lt. Col. TAKASAKI in Japanese.

/s/ James Iwanaga
/t/ T/4 JAMES IWANAGA

Witnessed: /s/ Claude M. Owens, 2d Lt., Inf.

I swear that I have heard the above statement read to me by T/4 IWANAGA, that I understand it and it is true.

/t/ Lt. Col. IKU TAKASAKI
/s/ Iku, Takasaki

Witnessed:

/s/ Fujio J. Asano
2d Lt, QMC
/s/ Claude M. Owens, 2d Lt., Inf.

A CERTIFIED TRUE COPY:

Douglas E. Allis

DOUGLAS E. ALLIS
2d Lt INF

SOUTH

GUARD HOUSE
Sgt. WATTORI

OFFICIAL PROHIBITING LINE

CATION BOUNDARY LINE MADE BY PRISONERS

Position First shot toward SKY.

Position called "HALT"

EAST

Sentry Tower

LATRINES

PLANTATION

BARRACKS

4m 3m 3m 2m 40m

NORTH

BEFORE THE
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

UNITED STATES OF AMERICA	
-vs-	PUBLIC TRIAL
KIN RYU RIN	

VOLUME II

Page 106 .

DATE: 30 April 1946

MANILA, P. I.

COPY NO. 2

CERTIFICATION

THIS CERTIFIES that this Volume is a part of the proceedings of the Military Commission appointed by Paragraph 29 of Special Orders No. 95, Headquarters, United States Army Forces, Western Pacific, dated 25 April 1946, in the trial of the case of the United States of America against KIN RYU RIN.

Dated 30 April 1946

Archibald L. Parmelee

ARCHIBALD L. PARMELEE
Colonel, CAC
President of Commission

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

UNITED STATES OF AMERICA)
)
-vs-) PUBLIC TRIAL
)
KIN RYU RIN)
)
- - - - - - - - - - - - - - - - -

Court No. 1
High Commissioner's Residence,
Manila, P. I.
30 April 1946

Met, pursuant to adjournment, at 1330 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL ARCHIBALD L. PARMELEE, CAC, Pres. & Law Member
COLONEL FRANCIS A. HAUSE, CAC
COLONEL EDWARD L. SUPPLE, CAC (Excused)
LIEUTENANT COLONEL STARLEY N. BOYKIN, JR., INF
CAPTAIN GLENN W. HENDRICKS, FA

APPEARANCES:

FOR THE PROSECUTION:

FIRST LIEUTENANT ROBERT A. DREYER, AC, Prosecutor

FOR THE DEFENSE:

FIRST LIEUTENANT IVAN H. GORDON, TC, Defense Counsel

INTERPRETERS FOR THE COMMISSION:

T/3 YOSHIYUKI MOTOYOSHI
T/3 GEORGE BABA

OFFICIAL REPORTERS FOR THE COMMISSION:

MARGARET M. MONTGOMERY
MARJORIA TITTLE

P R O C E E D I N G S

The Commission convened, pursuant to recess, at 1330 hours, 30 April 1946 in Courtroom No. 1, High Commissioner's Residence, Manila, P.I.

COLONEL PARMELEE: The Commission is in session.

LIEUTENANT DREYER: Sir, with the exception of Colonel Supple, excused by order of the Commanding General, AFWESPAC, all the members of the Commission, the accused, his defense counsel and the prosecutor are present.

COLONEL PARMELEE: Will the accused, his counsel and interpreter approach the bench?

Kin Ryu Rin, this Commission, upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring in each finding, finds you: GUILTY, as charged.

Further, this Commission, upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring, sentences you to death by hanging at such time and place as the reviewing authority may direct.

(Interpreter Baba translated to accused.)

COLONEL PARMELEE: The Military Police will take charge of the prisoner.

The Commission will now adjourn sine die.

(Whereupon, at 1332 hours, 30 April 1946, the Commission adjourned sine die.)

AUTHENTICATION OF RECORD

The foregoing 106 pages, contained in Volumes I through II, inclusive (Together with Prosecution Exhibits 1 through 4, inclusive, and Defense Exhibit A), are hereby certified as the record of the proceedings of the Military Commission appointed by Paragraph 29 of Special Orders No. 95, Headquarters, United States Army Forces, Western Pacific, dated 25 April 1946, in the trial of the case of the United States of America against KIN RYU RIN.

Dated 30 April 1946

Archibald L. Parmelee
ARCHIBALD L. PARMELEE
Colonel, CAC
President of Commission

THIS ACKNOWLEDGES that the above-described record was submitted to defense counsel prior to being certified by the President of the Commission.

Ivan H Gordon
IVAN H. GORDON
1st Lt. TC
Defense Counsel

BEFORE THE
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

UNITED STATES OF AMERICA	
-vs-	PUBLIC TRIAL
KIN RYU RIN	

VOLUME II

Page 106 ..

DATE: 30 April 1946

MANILA, P. I.

COPY NO. 1

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Dated 30 April 1946

Archibald L. Parmelee

ARCHIBALD L. PARMELEE
Colonel, CAC
President of Commission

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
-vs-	)	PUBLIC TRIAL
	)	
KIN RYU RIN	)	
	)	

- - - - - - - - - - - - - - - - -

Court No. 1
High Commissioner's Residence,
Manila, P. I.
30 April 1946

Met, pursuant to adjournment, at 1330 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL ARCHIBALD L. PARMELEE, CAC, Pres. & Law Member
COLONEL FRANCIS A. HAUSE, CAC
COLONEL EDWARD L. SUPPLE, CAC (Excused)
LIEUTENANT COLONEL STARLEY N. BOYKIN, JR., INF
CAPTAIN GLENN W. HENDRICKS, FA

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FOR THE PROSECUTION:

FIRST LIEUTENANT ROBERT A. DREYER, AC, Prosecutor

FOR THE DEFENSE:

FIRST LIEUTENANT IVAN H. GORDON, TC, Defense Counsel

INTERPRETERS FOR THE COMMISSION:

T/3 YOSHIYUKI MOTOYOSHI
T/3 GEORGE BABA

OFFICIAL REPORTERS FOR THE COMMISSION:

MARGARET M. MONTGOMERY
MARJORIA TITTLE

P R O C E E D I N G S

The Commission convened, pursuant to recess, at 1330 hours, 30 April 1946 in Courtroom No. 1, High Commissioner's Residence, Manila, P.I.

COLONEL PARMELEE: The Commission is in session.

LIEUTENANT DREYER: Sir, with the exception of Colonel Supple, excused by order of the Commanding General, AFWESPAC, all the members of the Commission, the accused, his defense counsel and the prosecutor are present.

COLONEL PARMELEE: Will the accused, his counsel and interpreter approach the bench?

Kin Ryu Rin, this Commission, upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring in each finding, finds you: GUILTY, as charged.

Further, this Commission, upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring, sentences you to death by hanging at such time and place as the reviewing authority may direct.

(Interpreter Baba translated to accused.)

COLONEL PARMELEE: The Military Police will take charge of the prisoner.

The Commission will now adjourn sine die.

(Whereupon, at 1332 hours, 30 April 1946, the Commission adjourned sine die.)

AUTHENTICATION OF RECORD

The foregoing 106 pages, contained in Volumes I through II, inclusive (Together with Prosecution Exhibits 1 through 4, inclusive, and Defense Exhibit A), are hereby certified as the record of the proceedings of the Military Commission appointed by Paragraph 29 of Special Orders No. 95, Headquarters, United States Army Forces, Western Pacific, dated 25 April 1946, in the trial of the case of the United States of America against KIN RYU RIN.

Dated 30 April 1946

Archibald L. Parmelee
ARCHIBALD L. PARMELEE
Colonel, CAC
President of Commission

THIS ACKNOWLEDGES that the above-described record was submitted to defense counsel prior to being certified by the President of the Commission.

Ivan H Gordon
IVAN H. GORDON
1st Lt. TC
Defense Counsel

BASIC Ltr, GHQ, SCAP, file 000.5 (12 Feb 46) LS dated 12 Feb 46
subj: "Trial of Kin Ryu Rin."

AG 000.5 (12Feb 46) LS 1st Ind.

General Headquarters, United States Army Forces, Pacific,
APO 500, 12 February 1946.

TO: Commanding General, United States Army Forces, Western Pacific, APO 707.

1. Pursuant to basic communication you are hereby directed to appoint a Military Commission for the trial of the following named civilian attached to the Japanese Imperial Forces:

Kin Ryu Rin

2. All records of trial including judgment or sentence and the action of the appointing authority will be forwarded to this headquarters. Unless otherwise directed, the execution of any death sentence will be withheld pending the action of the Supreme Commander for the Allied Powers.

3. The following named officer, assigned to the War Crimes Investigating Detachment, this headquarters, is made available to your command for service as prosecutor on the Military Commission to be convened by you for this purpose:

2d Lt. Robert A. Dreyer, AC

By command of General MacARTHUR:

H. W. ALLEN.
Colonel, AGD,
Asst. Adjutant General.

1 Incl:
Chg as indicated

3771

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

AG 000.5 (12 Feb 46) LS

APO 500
12 February 1946

SUBJECT: Trial of Kin Ryu Rin.

TO : Commander-in-Chief
United States Army Forces, Pacific, APO 500.

1. It is desired that a Military Commission be appointed for the trial of Kin Ryu Rin, a civilian attached to the Japanese Imperial Forces, for the alleged offense indicated in the attached Charge.

2. The trial is to be held in the city of Manila, Philippine Islands. The trial shall be conducted in conformity with Regulations Governing the Trials of Accused War Criminals, dated 5 December 1945, General Headquarters, Supreme Commander for the Allied Powers.

3. The record of trial including judgment or sentence and the action of the appointing authority will be forwarded to this headquarters. Unless otherwise directed, the execution of any death sentence will be withheld pending the action of the Supreme Commander for the Allied Powers.

FOR THE SUPREME COMMANDER:

H. W. Allen

H. W. ALLEN.
Colonel, A G D,
Asst. Adjutant General.

1 Incl:
Chg vs Kin Ryu Rin

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

Before the MILITARY COMMISSION convened by the COMMANDING GENERAL United States Army Forces, Western Pacific	)	UNITED STATES OF AMERICA vs Kin Ryu RIN

CHARGE

Killing a prisoner of war in violation of the laws of war.

SPECIFICATION

In that Kin Ryu RIN, then a civilian attached to the Imperial Japanese Army, did, at Cabanatuan, Nueva Ecija, Luzon, Philippine Islands, on or about 11 August 1944, during a time of war between the United States of America, its allies and dependencies and Japan, willfully and unlawfully kill one Lieutenant Robert HUFFCUTT, a commissioned officer in the Armed Forces of the United States of America, then a prisoner of war held by the Imperial Japanese Armed Forces, by shooting him with a rifle, in violation of the laws of war.

Dated: 11 February 1946.

Alva C. Carpenter
ALVA C. CARPENTER
Colonel, JAGD
United States Army

AFFIDAVIT

Before me personally appeared the above named accuser this 11th day of February 1946, and made oath that he is a person subject to military law and that he personally signed the foregoing charge, and further that he has investigated the matters set forth in the charge, and that it is true in fact, to the best of his knowledge and belief.

Edmund M. Sweeney
1st Lt. JAGD AUS

GENERAL HEADQUARTERS
UNITED STATES ARMY FORCES, WESTERN PACIFIC
APO 707

25 April 1946

Referred for trial to Lt. Robert A. Dreyer, AC, Prosecutor of the Military Commission appointed by paragraph 29, Special Orders No. 95 this headquarters, 25 April 46 1946.

By command of Lieutenant General STYER:

W. P. Moore
W. P. MOORE
Colonel, AGD
Ass't Adjutant General

I hereby certify that I have served a copy hereof, together with a true and complete translation thereof into Japanese, on the above-named accused this 27th day of April 1946.

Robert A. Dreyer
1ST LT, AC
PROSECUTOR

MILITARY COMMISSION
Convened by the
COMMANDING GENERAL
UNITED STATES ARMY FORCES, WESTERN PACIFIC

APO 707
29 April 1946

SUBJECT: Summoning and Swearing Witnesses for RIN KIN RYU trial.

TO: Robert A. Dreyer, 1st Lt., AC

1. Pursuant to authority of provisions of Letter, General Headquarters, Supreme Commander for the Allied Powers, 5 December 1945, subject: "Regulations Governing the Trials of Accused War Criminals," you are authorized, as prosecutor of RIN KIN RYU, referred for trial to the Military Commission convened by the Commanding General, United States Army Forces, Western Pacific, by Paragraph 29, Special Orders No. 95, dated 25 April 1946, to issue, for this Commission, summons to compel the attendance of witnesses to such trial and to require such witnes es to bring with them any papers or documents which may be required as evidence in such trial, and to administer oaths or affirmations to witnesses and other persons.

Archibald L. Parmelee
ARCHIBALD L. PARMELEE
Colonel, CAC
President of Commission

RESTRICTED

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC

APO 707
25 April 1946

Special Orders)
:
No. .....95)

EXTRACT

29. The following officers are appointed members of a Military Commission to meet in the City of Manila, Philippine Islands, at the call of the President thereof, for the trial of Kin Ryu Rin, accused war criminal. (Authority: 1st Ind. GHQ, AFPAC, APO 500, 12 Feb 46, to letter GHQ, SCAP, file AG 000.5 (12 Feb 46) LS, dated 12 Feb 46, subj: "Trial of Kin Ryu Rin"):

Col. Archibald L. Parmelee CAC Pres. & Law Member
Col. Francis A. Hause CAC
Col. Edward L. Supple CAC
Lt. Col. Starley N. Boykin, Jr. INF
Capt. Glenn W. Hendricks FA

The prosecution will be conducted by 1st Lt. Robert A. Dreyer, AC. The Defense Counsel will be 1st Lt. Ivan H. Gordon, TC.

The Commission will follow the provisions of Letter, GHQ, SCAP, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals," and is authorized to employ or appoint such interpreters, stenographic reporters and other assistants as it shall deem advisable.

The record of trial including any judgment or sentence will be transmitted directly to this headquarters for action by the appointing authority.

BY COMMAND OF LIEUTENANT GENERAL STYER:

OFFICIAL:

BENITO MORALES,
Colonel, AGD
Asst Adj Gen.

J G CHRISTIANSEN
Major General, USA
Deputy Commander, and
Chief of Staff

DISTRIBUTION:
War Crimes (60)

RESTRICTED

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL

GSJA 000.5

APO 707
27 MAY 1946

SUBJECT: Transmittal of United States vs. Kin Ryu Rin Record of Trial, Action of Appointing Authority, and Original Charge Sheet.

TO : Commander-in-Chief, United States Army Forces, Pacific, APO 500.

1. Record of Trial, Action of Appointing Authority, and original charge sheet are transmitted herewith pursuant to paragraph 2, first indorsement, General Headquarters, United States Army Forces, Pacific, file: AG 000.5 (12 Feb 46) LS, dated 12 February 1946, to basic letter order, General Headquarters, Supreme Commander for the Allied Powers, file: AG 000.5 (12 Feb 46) LS, dated 12 February 1946, subject: "Trial of Kin Ryu Rin".

2. Record of Trial consists of Volumes I and II.

FOR THE COMMANDING GENERAL:

THOMAS J. BROWN
CWO USA
ASST. ADJ. GEN

3 Incls:
Record of Trial
Action
Original Charge Sheet

GENERAL HEADQUARTERS
UNITED STATES ARMY FORCES, PACIFIC

CHECK SHEET

(Do not remove from attached sheets)

P. W. CLARKSON
MAJ. GEN., U.S.A.

File No: JA 201-Kin Ryu Rin (Civ) **Subject:** Trial by Military Commission.

Note No.	**From:** Theater JA **To:** Chief of Staff **Date:** 11 June 1946
1	1. Kin Ryu Rin, a civilian attached to the Imperial Japanese Army, was convicted by a military commission of murdering an American prisoner of war in violation of the laws of war and sentenced to death by hanging.
	2. The Commanding General, United States Army Forces, Western Pacific, who appointed the Commission, approved the sentence but withheld execution pending action of the Supreme Commander for the Allied Powers.
	3. This office has examined the record of trial and for the reasons set forth in the attached review recommends that the sentence be confirmed.
	4. An action designed to carry such recommendations into effect is submitted herewith for General MacArthur's signature in the event he concurs.
	5. It is requested that the file be returned to this office for further necessary action when General MacArthur has acted on the case.
	S. F. COHN Colonel, Infantry Acting Theater Judge Advocate

2 Incls:
1 - Review
2 - Action

14/12

AFPAC AGO Form No. 87

GENERAL HEADQUARTERS
UNITED STATES ARMY FORCES, PACIFIC
OFFICE OF THE THEATER JUDGE ADVOCATE

JA 201-Kin Ryu Rin (Civ)

APO 500
11 June 1946

SUBJECT: Review of the Record of Trial by a Military Commission of Kin Ryu Rin, a civilian attached to the Imperial Japanese Army.

TO : The Supreme Commander for the Allied Powers.

1. OFFENSES:

a. Charge: Violation of the Laws of War (R 9)

Specification: Murder of Lieutenant Robert Huffcut, an American prisoner of war, at Cabanatuan, Nueva Ecija, Luzon, P.I. on 11 August 1944 (R 9, 10)

b. Pleas: Not Guilty (R 11)

c. Findings: Guilty (R 106)

d. Sentence: Death by hanging (R 106)

e. Maximum Sentence: As a military commission may direct

f. Convening Authority: Lieutenant General W. D. Styer, U. S. Army, commanding United States Army Forces, Western Pacific, who approved the sentence

g. Place of Trial: The High Commissioner's Residence, Manila, P. I. (R 1)

h. Date of Trial: 29 and 30 April 1946 (R 1, 106)

2. EVIDENCE: Briefly summarized, the evidence is to the following effect:

Camp Cabanatuan on Luzon Island, used as a prisoner of war camp by the Japanese during August 1944 and for some time prior thereto, extended 800 yards from north to south, and 200 yards from east to west (R 18, 36). Its north, east and south extremities were bounded by double barbed wire fences eight feet high which "a man could not go through without wire cutters" (R 19, 36, 37). Thirty to thirty-five feet inside of the fence and running generally parallel to it there was an irregular four foot gravel "perimeter walk" or path which was patrolled by Japanese sentries at hundred yard intervals and by American prisoners assigned to guard

duty (R 19, 21, 28, 29, 31, 37). A row of stakes placed by the Americans between the path and the fence marked the boundary beyond which prisoners of war were not permitted to pass (R 42). Inside the area bounded by the path was an old perimeter walk no longer used, which in turn enclosed vegetable gardens cultivated by the prisoners as a supplemental source of food (R 17-19, 21, 31, 33, 37, 39, 42).

About noon on 11 August 1944 two American prisoners, while using an exposed latrine in the center of the camp heard a shot, turned around, and saw Lieutenant Robert Huffcut, an American prisoner of war, lying on his stomach and struggling to rise from his garden, seventy-five yards to the north of them and contiguous to and inside of the old perimeter walk (R 22-25, 31, 39-41, 45). Neither heard unusually loud voices immediately preceding the shot (R 30, 31, 44), although one admittedly had testified in another case involving the same incident that he heard a guard yell "kuday" which he believed meant "hey" (R 44). Less than a minute later they saw and heard a second shot fired from the middle of the three towers along the easterly camp boundary. Huffcut, who was then trying to rise, immediately fell over and did not move again (R 24, 25, 40, 45). The Japanese officer of the day, two sentries and two American officers came from the center of the camp, examined Huffcut, then dead, and carried him to the hospital area (R 14, 40). He was buried the same day in the camp graveyard (R 43). Accused admittedly fired the two shots at Lieutenant Huffcut from his observation tower, and at least one of them struck the deceased, causing his death (R 13, 14, Pros. Ex. 2).

The accused elected to testify in substance that he was employed as a civilian guard by the Japanese Army and was posted on the sentry tower located inside the double barbed wire fence, at 0800 on 11 August 1944 (R 47, 48, 71, Def. Ex. A). Inside the fence were two concentric paths, the inner one patrolled by American guards, and the outer by Japanese (R 72). The row of stakes prepared by the prisoners to mark the zone of safety was inside the innermost path (Def. Ex. A). Shortly before noon he saw Huffcut go easterly from the latrines in the center of the camp beyond the row of stakes into the off-limit area. As the deceased was crossing the inner path, fellow prisoners in the latrines shouted warnings at him and he himself also yelled four times and waved his arms, but Huffcut continued walking easterly at a rather rapid pace (R 50). When fellow guards ordered him to shoot, he fired one shot into the air. The prisoner, however, paid no attention and after he had reached a point one meter beyond the path patrolled by the Japanese sentries, the accused, believing he was trying to escape, shot Huffcut, then sixty to seventy meters away, and the latter fell into a shallow ditch adjoining the path (R 50-52, 61). As he had been instructed by his commanding officer to treat those who passed beyond the off-limit line as escaping prisoners and to shoot them, he would have been court-martialed had he not fired at Huffcut (R 51). Admitting on cross-examination that he had previously made a written statement reciting that both shots had struck the prisoner (R 56), he nevertheless testified that he now believed that both of the shot wounds -- through the left arm and into the lower abdomen -- were caused by a single bullet (R 53). He also made a statement to an investigating officer to the effect that at the time he fired the two shots (the first of which he stated missed the target),

he did not believe that Huffcut was trying to escape, and that he was later told by his commanding officer and the captain of the guard "that I had shoot too fast, that the killing was not necessary, that in the future everything should be done to avoid killing the prisoners" (Pros. Ex. 3). Accused further testified that he was threatened by the investigating officer when he made the foregoing statement (R 67), although after the interpreter present at the investigation was called in rebuttal (R 96-100), his counsel waived any necessity of calling the investigating officer saying "the interpreter who accompanied Lieutenant Owens (the investigating officer) has, shall we say, cleared him?" (R 102).

A Japanese medical officer testified that he believed the arm and abdomen wounds he discovered upon examination of Huffcut's body in the shallow ditch a few minutes after the shooting, were caused by a single bullet (R 75, 76, 78).

Accused's commanding officer testified that he had been told by an American lieutenant colonel that Huffcut was not quite sane (R 86).

3. DISCUSSION: The Commission's findings and sentence are fully sustained by the evidence. That accused fired the fatal shot or shots that struck Huffcut is freely admitted by him and that at least one of these shots was fatal was testified to by his own Japanese medical witness. Two American prisoners, a colonel and a staff sergeant, after their attention was drawn to Lieutenant Huffcut who was wounded by the first round, observed him shot a second time by the guard on the central easterly tower. Both witnesses saw that Huffcut was then rightfully within his own garden, the colonel having noticed him there some minutes before (R 22). Although no motive for the killing appears, where a deadly weapon is used with the deliberate intention of taking life, and death ensues, it is murder in the first degree (Wharton's Criminal Law, 12th Ed., Sec. 518).

Accused strongly urges that as a sentry he was obeying orders of his commanding officer, and fired only after observing that Lieutenant Huffcut was either trying to escape or had reached an area forbidden to prisoners. If true, these circumstances would either justify the homicide or so reduce it in degree as to render inappropriate the punishment imposed. However, accused's testimony is so self-contradictory and is in such conflict with his pre-trial statements that no credence can be given to it. On the trial he testified that, believing Huffcut was going to escape (R 61), he aimed the first of two shots "into the sky" (R 50), although he had previously stated that he did not believe Huffcut was trying to escape but rather was looking for vegetables (Pros. Ex. 3), and that both shots took effect (Pros. Ex. 2) or that the first missed (Pros. Ex. 3), in either case indicating a deliberate aim. Again, he testified that Huffcut's body fell into a shallow ditch adjoining the outer path (R 50) although earlier he had stated that he was too excited to see where the body fell but later noticed blood stains just outside the line of stakes (Pros. Ex. 3). While prior to trial he admitted that the Captain of the Guard told him in the presence of his detail that he had shot too fast and that the killing was unnecessary (Pros. Ex. 3), on the trial he denied having talked with the captain at all (R 66). After testifying concerning one of his confessions

that "I was threatened and the investigating officer called me and told me that I was not telling the truth and he fingered his revolver and I figured at that time it would be foolish to be killed and I did what the investigating officer ordered me to do" (R 6, 7), his own counsel stipulated in effect that no such threats or intimidations had been used (R 102). The boundary of stakes which at the trial he had placed inside of the inner path (R 48, Def. Ex. A), he had before trial fixed as outside of the outer path (Pros. Ex. 3), thereby alternately contending that both paths were "in and out of bounds."

Viewed in a light most favorable to him the evidence indicates that the accused, when he fired, was unjustified in assuming that Huffcut's escape was imminent, as the latter in broad daylight was merely walking toward an impenetrable fence. While such force as is necessary may be employed to prevent the escape of a prisoner (Wheaton's International Law, 7th English Ed., p. 183), the circumstances did not justify his severe measures. However, whether the evidence adduced in behalf of the accused was sufficient to constitute a defense based on legal justification, was a question of fact to be determined by the trial commission. It is evident that the commission elected to reject the accused's confused and inconsistent version of the killing and accept that of the two prosecution eye-witnesses whose testimony was unimpeached on important details; and no substantial basis is presented for disturbing the commission's judgment.

4. CLEMENCY: None of the five members of the Trial Commission recommended clemency, nor did Lieutenant General W. D. Styer, commanding United States Army Forces, Western Pacific, who approved the sentence. The extreme penalty imposed on accused is appropriate to the offense under the facts and circumstances herein. This office is therefore constrained to recommend that clemency be not extended.

5. OPINION: It is the opinion of this office that:

a. The Military Commission was legally constituted;

b. It had jurisdiction of the person and the offense;

c. The evidence supports the findings of guilty;

d. The record discloses no errors injuriously affecting the substantial rights of the accused; and,

e. The sentence is legal.

6. RECOMMENDATIONS: Accordingly, it is recommended that the sentence be confirmed and ordered executed under the supervision of and at a time and place to be designated by the Commanding General, United States Army Forces, Western Pacific.

7. ACTION: An action designed to carry the above recommendations into effect, should it meet with your approval, is submitted herewith.

John H. Finger
JOHN H. FINGER,
Chief, Military Commission Section

S. F. COHN,
Colonel, Infantry
Acting Theater Judge Advocate

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

APO 500
12 June 1946

In the foregoing case of Kin Ryu Rin, a civilian attached to the Imperial Japanese Army, the sentence is confirmed and will be duly executed under the supervision of and at a time and place to be designated by the Commanding General, United States Army Forces, Western Pacific.

Douglas MacArthur

DOUGLAS MacARTHUR
General of the Army, United States Army,
Supreme Commander

P.R.O. 1
009.582
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58
44

GENERAL HEADQUARTERS
UNITED STATES ARMY FORCES, PACIFIC

Military Commission)
:
Orders No .....24)

APO 500
13 June 1946

Before a Military Commission which convened at the High Commissioner's Residence, Manila, Philippine Islands on 29 April 1946, pursuant to Letter Order, File: AG 000.5 (5 Dec 45)LS, General Headquarters, Supreme Commander for the Allied Powers, dated 5 December 1945, subject: Regulations Governing the Trials of Accused War Criminals; Letter Order, File: AG 000.5 (12 Feb 46)LS, General Headquarters, Supreme Commander for the Allied Powers, dated 12 February 1946, with First Indorsement thereto, subject: Trial of Kin Ryu Rin; and paragraph 29, Special Orders Number 95, Headquarters, United States Army Forces, Western Pacific, dated 25 April 1946, was arraigned and tried:

Kin Ryu Rin, a civilian attached to the Imperial Japanese Army.

CHARGE: Killing a prisoner of war in violation of the laws of war.

Specification: In that Kin Ryu Rin, then a civilian attached to the Imperial Japanese Army, did, at Cabanatuan, Nueva Ecija, Luzon, Philippine Islands, on or about 11 August 1944, during a time of war between the United States of America, its allies and dependencies and Japan, willfully and unlawfully kill one Lieutenant Robert HUFFCUTT, a commissioned officer in the Armed Forces of the United States of America, then a prisoner of war held by the Imperial Japanese Armed Forces, by shooting him with a rifle, in violation of the laws of war.

PLEAS

To the Specification and Charge: "Not Guilty"

FINDINGS

Of the Specification and Charge: "Guilty"

SENTENCE

Death by hanging.

The sentence was adjudged 30 April 1946.

(MCO 24)

The following is the action of the reviewing authority:

"HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL
APO 707

24 May 1946

In the foregoing case of the United States of America vs. Kin Ryu Rin, a civilian attached to the Imperial Japanese Army, the sentence is approved. Pursuant to paragraph 3, Letter Order, General Headquarters, Supreme Commander for the Allied Powers, file AG 000.5 (12 Feb 46)LS, subject: "Trial of Kin Ryu Rin," dated 12 February 1946, execution of the sentence is withheld pending the action of the Supreme Commander for the Allied Powers.

(signed) W. D. Styer
(typed) W. D. STYER
Lieutenant General, United States Army
Commanding"

The following is the action of the confirming authority:

"GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

APO 500
12 June 1946

In the foregoing case of Kin Ryu Rin, a civilian attached to the Imperial Japanese Army, the sentence is confirmed and will be duly executed under the supervision of and at a time and place to be designated by the Commanding General, United States Army Forces, Western Pacific."

(signed) Douglas MacArthur
(typed) DOUGLAS MacARTHUR
General of the Army, United States Army,
Supreme Commander"

By command of General MacARTHUR:

PAUL J. MUELLER.
Major General, General Staff Corps,
Chief of Staff.

OFFICIAL:

C. Z. SHUGART,
Colonel, AGD,
Asst Adj Gen.

58

BASIC: Ltr, Hq 65th Sta Hosp, APO 75, dtd 17 Jul 46, Subject: Notification of Death.

GHQ, AFPAC
27 JUL 1946
AG 000.5 Sec

000.5 2nd Ind. WPM/fjg

HEADQUARTERS, AFWESPAC, APO 707, 22 July 1946

TO: Commander-in-Chief, GHQ, AFPAC, APO 500

Notification of the death of Kin Ryu Rin, executed by hanging in accordance with Military Commission Order No. 24, 13 June 46, is forwarded herewith.

FOR THE COMMANDING GENERAL:

W. P. MOORE
Lt Col, AGD
Asst Adj Gen

1 Incl:
Surgeon's Cert.

RECEIVED
28 JUL 1946

MAILED
22 JUL 1946
A.G. DIST. CTR.
ALWESPAD

RECEIVED
27 JUL 1946
GHQ-AFPAC
A.G.O.

HEADQUARTERS
65th STATION HOSPITAL
APO 75

17 July 1946

GHQ. FEAC
27 JUL 1946
AG 000.5 WC

SUBJECT: Notification of Death

THRU : Commanding Officer, Philippine Detention & Rehabilitation Center, APO 75

TO : Commanding General, AFWESPAC, APO 707

1. In compliance with Section II, par 2, AR 600-550, the following notification of death is submitted:

a. Name - KIN RYU RIN

b. Rank - War Criminal

c. ASN - 51-J23626

d. Arm or Service - Not applicable

e. Date of Death - 17 July 1946

f. Place of Death - Philippine Detention & Rehabilitation Center, APO 75

g. Cause of Death - Execution by hanging

h. Line of Duty - Not applicable

Elmer R Billings
ELMER R. BILLINGS
Captain, MC

1st Ind
Headquarters, Philippine Detention & Rehabilitation Center, APO 75, 17 July 1946

TO: Commanding General, AFWESPAC, APO 707

Forwarded.

John H. Fonvielle
JOHN H. FONVIELLE
Colonel, CAC
Commanding

C-E-R-T-I-F-I-C-A-T-E

17 July 1946

I certify that I examined the body of War Criminal KIN RYU RIN (51-J23626) after legal execution by hanging and pronounced him dead at 2055 hours, 17 July 1946.

Elmer R Billings

ELMER R. BILLINGS
Captain, MC

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE STAFF JUDGE ADVOCATE

UNITED STATES OF AMERICA)
)
-vs-) REVIEW
)
KIN RYU RIN)

MANILA, P. I. DATE 21 May 1946

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL
APO 707

24 May 1946

In the foregoing case of the United States of America vs. Kin Ryu Rin, a civilian attached to the Imperial Japanese Army, the sentence is approved. Pursuant to paragraph 3, Letter Order, General Headquarters, Supreme Commander for the Allied Powers, file AG 000.5 (12 Feb 46)LS, subject: "Trial of Kin Ryu Rin," dated 12 February 1946, execution of the sentence is withheld pending the action of the Supreme Commander for the Allied Powers.

W. D. STYER
Lieutenant General, United States Army
Commanding

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE STAFF JUDGE ADVOCATE

APO 707
21 May 1946

UNITED STATES -vs- KIN RYU RIN	Place of Trial	: High Commissioner's Residence, Manila, P.I.
	Arraigned	: 29 April 1946
	Tried	: 29 April 1946
	Sentenced	: 30 April 1946

CHARGE

Killing a prisoner of war in violation of the laws of war.

SPECIFICATION

In that Kin Ryu RIN, then a civilian attached to the Imperial Japanese Army, did, at Cabanatuan, Nueva Ecija, Luzon, Philippine Islands, on or about 11 August 1944, during a time of war between the United States of America, its allies and dependencies and Japan, willfully and unlawfully kill one Lieutenant Robert HUFFCUTT, a commissioned officer in the Armed Forces of the United States of America, then a prisoner of war held by the Imperial Japanese Armed Forces, by shooting him with a rifle, in violation of the laws of war.

PLEA, FINDING AND SENTENCE

Plea : Not Guilty

Findings: Guilty

Sentence: Death by hanging.

1. FORMAL MATTERS.

a. Authority of the commission to act. Commission was appointed by the Commanding General, United States Army Forces, Western Pacific, and trial had under authority of Letter Order AG 000.5 (5 Dec 45) LS, General Headquarters

Supreme Commander for the Allied Powers, "Regulations Governing the Trials of Accused War Criminals" (R-2-105); Letter Order AG 000.5 (12 Feb 46) LS, General Headquarters, Supreme Commander for the Allied Powers. "Trial of Kin Ryu Rin" (R-3); 1st indorsement, AG 000.5 (12 Feb 46) LS, General Headquarters, AFPAC (R-4); Paragraph 95, Special Orders 95, Headquarters, AFWESPAC, 25 April 1946 (R-5).

b. Reporters, interpreters, members of the commission and personnel for the prosecution were sworn (R-1,7).

c. Charges were duly served on the accused, 2 April 1946 (R-7).

d. Rights of accused were read and explained in open court (R-8); he was represented by duly appointed counsel of his choice (R-8).

e. Accused was duly arraigned (R-9).

f. All witnesses appearing were duly sworn.

2. EVIDENCE:

The prosecution bases its case mainly on two sworn statements of the accused (R-13,68) and the testimony of Colonel John H. Ball, USA (R-15,103) and Staff Sergeant Thomas H. Bogie (R-35) both of whom were prisoners of the Japanese at Cabanatuan, where the killing occurred, and claim to be eye-witnesses to the shooting. The testimony of these two is essentially the same in substance, to wit:

That on or about 11 August 1944 at between 1130 and 1300 hours, while they were in the latrine area allowed for prisoners they heard a shot and turned to see Lieutenant Huffcutt, the deceased, lying on the ground, trying to arise. They then saw the guard in the tower fire again and Lieutenant Huffcutt fell prone and ceased moving. All of these occurred while Lieutenant Huffcutt was in his garden in an area in which prisoners were allowed. The deceased was doing

no more than working in his garden which was the general custom during this time of the day. They both testify that the deceased was shot from a guard tower outside of an 8 foot high double fence of barbed wire.

The sworn statements of the accused admit that he was a civilian guard attached to the Japanese Army and on sentry duty in the tower indicated above and that he did the shooting (R-13,68).

Colonel Ball testified that he knew the deceased and considered him a very sane and well balanced man (R-16).

Neither witness saw anything that might give provocation for shooting the deceased.

FOR THE DEFENSE.

There is no denial on the part of the defense that the accused, a Formosan employed as a civilian guard by the Japanese army, killed the deceased, in fact it is admitted. Their contention, however, and main difference from the testimony of the prosecution, is that the deceased was not shot in his garden but after having passed into the restricted area between gardens and the camp boundary fence, and while continuing to approach the boundary fence. This is testified to by the accused who further stated that when he saw the deceased start towards the restricted area he called to him to halt and fired into the air, that deceased kept approaching the boundary fence so he shot him, that he thought the prisoner was trying to escape and that he was required to shoot under prison rules (R-49,50). In a previous statement (Exhibit 3) he stated that the deceased was walking parallel to the fence a few feet inside the restricted area some 30 to 40 feet away from the fence.

Lieutenant Suehiro of the Japanese Medical Corps testified that he examined the body about 10 minutes after the shooting

and that it was lying in a ditch in the restricted area as testified to by the accused (R-76). He could not state whether the body had been moved. He further stated that in his opinion only one wound had struck the deceased, and that although there were two wounds in the left arm, indicating that a bullet had passed through it and one wound in the abdomen, he believed all three wounds were caused by the same bullet (R-78).

Lieutenant Colonel Takasaki testified that a Lieutenant Colonel Wilson of the American army, told him that the deceased had been ill, was not quite sane and had to be watched by his fellow prisoners (R-86).

3. DISCUSSION.

There are a lot of discrepancies in the testimony of both sides as to whether the guard tower was outside or inside of the double barbed wire fence and as to whether there was a row of stakes inside the camp marking the boundaries by and which prisoners could not go. In view of the fact that according to the testimony of both sides the deceased could have been shot in only one of two places, i.e. his garden or the ditch which is admitted by both sides to be out of bounds, the evidence as to the location of the towers and markers seems to be irrelevant as to the main issue. The evidence given by both the accused and Lieutenant Colonel Takasaki is in many places contradictory to statements previously made by them and incorporated as exhibits in the record (R-50,Exh 2) (R-59,Exh2)(R-84,Exh 4)(R-89)(R-90).

4. OPINION AND REASONS THEREFORE:

a. As to the Jurisdiction and Procedure.

1. The commission was properly appointed and had jurisdiction over the offense charged and the person of

the defense.

2. The accused was advised of and accorded all rights required by the prescribed regulations.

3. Findings and sentence were returned upon concurrence of two thirds of the members of the commission.

b. As to the Evidence.

In as much as there seems to be no error in the conduct of the trial the question resolves itself as to the sufficiency of the evidence. In this case there is direct testimony of both sides by eye-witnesses as to what occurred. Where such evidence is in direct contradiction it is within the province of the court to weigh it according to its merits, accept one and reject the other. In this case the court being present when the testimony was given, being able to watch the demeanor and answers of the witnesses testifying has rejected the testimony of the defendant and accepted that of the prosecution. There is sufficient evidence to justify their decision and sustain the verdict.

5. RECOMMENDATION:

It is recommended the sentence herein be approved and the record of trial be forwarded to the Commander-in-Chief, United States Army Forces, Pacific, for action under paragraph 2, 1st indorsement, General Headquarters, United States Army Forces, Pacific, 12 February 1946 to letter, General Headquarters, Supreme Commander for the Allied Powers, file 000.5 (12 Feb 46) LS, subject: "Trial of Kin Ryu Rin", 12 February 1946.

The form of action designed to effect the foregoing recommendation is attached.

John N. Sebrell, Jr.
JOHN N. SEBRELL, JR.
1st Lieutenant, MAC
Asst Staff Judge Advocate

I CONCUR:

Ashton M. Haynes
ASHTON M. HAYNES
Colonel, JAGD
Staff Judge Advocate

BEFORE THE
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

UNITED STATES OF AMERICA	
-vs-	ARRAIGNMENT AND PUBLIC TRIAL
KIN RYU RIN	

VOLUME I

Pages 1 to 105

DATE: 29 April 1946

MANILA, P. I.

COPY NO.: 9

CERTIFICATION

THIS CERTIFIES that this Volume is a part of the proceedings of the Military Commission appointed by Paragraph 29 of Special Orders No. 95, Headquarters, United States Army Forces, Western Pacific, dated 25 April 1946, in the trial of the case of the United States of America against KIN RYU RIN.

Dated 30 April 1946

Archibald L. Parmelee

ARCHIBALD L. PARMELEE
Colonel, CAC
President of Commission

Before the
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

UNITED STATES OF AMERICA -vs- KIN RYU RIN	ARRAIGNMENT AND PUBLIC TRIAL

Court No. 1
High Commissioner's Residence,
Manila, P. I.
29 April 1946

Met, pursuant to notice, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL ARCHIBALD L. PARMELEE, CAC, Pres. & Law Member
COLONEL FRANCIS A. HAUSE, CAC
COLONEL EDWARD L. SUPPLE, CAC (Excused)
LIEUTENANT COLONEL STARLEY N. BOYKIN, JR., INF
CAPTAIN GLENN W. HENDRICKS, FA

APPEARANCES:

FOR THE PROSECUTION:

FIRST LIEUTENANT ROBERT A. DREYER, AC, Prosecutor

FOR THE DEFENSE:

FIRST LIEUTENANT IVAN H. GORDON, TC, Defense Counsel

INTERPRETERS FOR THE COMMISSION:

T/4 ISAMI OSATO
T/3 YOSHIYUKI MOTOYOSHI
T/3 GEORGE BABA

OFFICIAL REPORTERS FOR THE COMMISSION:

MARGARGET M. MONTGOMERY
MARJORIA TITTLE

I N D E X

WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS	COMMISSION
John H. Ball (Recall)	15	27			33 103
Thomas H. Bogie	35	43			46
Kin Ryu Rin	47	55	68	71	69
Satoru Suehiro	74	79	82	83	82
Iku Takasaki	84	87		94	94
James Iwanaga	96	100	101		

DOCUMENTARY EVIDENCE

INCORPORATED INTO RECORD

Letter Order, AG 000.5 (12 Feb 46) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 12 February 1946, Subject, "Trial of Kin Ryu Rin" and 1st Ind. thereto. 3

Extract of Special Orders No. 95, Paragraph 29 thereof, Headquarters, United States Army Forces, Western Pacific, dated 25 April 1946. 5

Letter Order, President of Commission, dated 29 April 1946, Subject, "Summoning and Swearing Witnesses for RIN KIN RYU Trial." 6

Charge and Specification 9

EXHIBITS

RECEIVED IN EVIDENCE

Prosecution's Exhibit No:	
1	2
2	14
3	68
4	90
Defense Exhibit No. A	49

P R O C E E D I N G S

The Commission convened at 0830 hours, 29 April 1946 in Court Number 1, High Commissioner's Residence, Manila, P.I.

COLONEL PARMELEE: The Commission will convene and hear any matter to be brought before it.

LIEUTENANT DREYER: If the Commission please, because he does not speak English, the accused has been furnished a personal interpreter of his own choice who will translate all matters directly to him as the case proceeds. Subject to the approval of the Commission, therefore, it has been stipulated between the accused, his defense counsel and the prosecution that the proceedings need not be translated by the official interpreters in open court for the benefit of the accused unless the accused subsequently requests otherwise as to any specific portion or portions thereof.

COLONEL PARMELEE: Does the defense agree to that stipulation?

LIEUTENANT GORDON: The defense does.

COLONEL PARMELEE: Does the accused in person join in that stipulation?

LIEUTENANT GORDON: He does.

COLONEL PARMELEE: The stipulation will be approved as stated.

LIEUTENANT DREYER: There has been referred to this Commission for trial the case of the United States of America against Kin Ryu Rin. All members of the Commission, the accused, his regularly appointed defense counsel, and the prosecutor being present, the prosecution is ready to proceed.

COLONEL PARMELEE: You may proceed.

LIEUTENANT DREYER: The prosecution offers in evidence the following document:

"Letter Order, AG 000.5 (5 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 5 December 1945. Subject, 'Regulations Governing the Trials of Accused War Criminals.' "

COLONEL PARMELEE: Is there any objection by the defense?

LIEUTENANT DREYER: No objection, Sir.

COLONEL PARMELEE: The document will be received in evidence as Prosecution's Exhibit No. 1.

(Prosecution Exhibit No. 1 received in evidence.)

LIEUTENANT DREYER: The prosecution submits for incorporation into the record of these proceedings the following documents:

Letter Order, AG 000.5 (12 Feb 46) LS, General Headquarters, Suprome Commander for the Allied Powers, dated 12 February 1946, Subject, "Trial of Kin Ryu Rin" and 1st Indorsement thereto same date;

Extract of Special Orders No. 95, Paragraph 29 thereof, Headquarters, United States Army Forces, Western Pacific, dated 25 April 1946;

Letter Order, President of this Commission, dated 29 April 1946, Subject, "Summoning and Swearing Witnesses for RIN KIN RYU Trial."

COLONEL PARMELEE: Any objections by the defense to the introduction of these documents?

LIEUTENANT GORDON: There is no objection, Sir.

COLONEL PARMELEE: There being no objection, the documents will be incorporated into the record.

"GENERAL HEADQUARTERS
"SUPREME COMMANDER FOR THE ALLIED POWERS

"AG 000.5 (12 Feb 46) LS

APO 500
12 February 1946

"SUBJECT: Trial of Kin Ryu Rin.

"TO : Commander-in-Chief
United States Army Forces, Pacific, APO 500.

"1. It is desired that a Military Commission be appointed for the trial of Kin Ryu Rin, a civilian attached to the Japanese Imperial Forces, for the alleged offense indicated in the attached Charge.

"2. The trial is to be held in the city of Manila, Philippine Islands. The trial shall be conducted in conformity with Regulations Governing the Trials of Accused War Criminals, dated 5 December 1945, General Headquarters, Supreme Commander for the Allied Powers.

"3. The record of trial including judgment or sentence and the action of the appointing authority will be forwarded to this headquarters. Unless otherwise directed, the execution of any death sentence will be withheld pending the action of the Supreme Commander for the Allied Powers.

"FOR THE SUPREME COMMANDER:

"/s/ H. W. Allen
/s/ H. W. ALLEN.
Colonel, AGD,
Asst. Adjutant General.

"1 Incl:
Chg vs Kin Ryu Rin"

"BASIC Ltr, GHQ, SCAP, File 000.5 (12 Feb 46) LS dated 12 Feb 46
subj: "Trial of Kin Ryu Rin."

"AG 000.5 (12 Feb 46) LS 1st Ind.

"General Headquarters, United States Army Forces, Pacific,
APO 500, 12 February 1946.

"TO: Commanding General, United States Army Forces, Western
Pacific, APO 707.

"1. Pursuant to basic communication you are hereby directed to appoint a Military Commission for the trial of the following named civilian attached to the Japanese Imperial Forces:

"Kin Ryu Rin

"2. All records of trial including judgment or sentence and the action of the appointing authority will be forwarded to this headquarters. Unless otherwise directed, the execution of any death sentence will be withheld pending the action of the Supreme Commander for the Allied Powers.

"3. The following named officer, assigned to the War Crimes Investigating Detachment, this headquarters, is made available to your command for service as prosecutor on the Military Commission to be convened by you for this purpose:

"2d Lt. Robert A. Dreyer, AC

"By command of General MacARTHUR:

"/s/ H. W. Allen
/t/ H. W. ALLEN.
Colonel, AGD,
Asst. Adjutant General.

"1 Incl:
Chg as indicated"

"RESTRICTED

"HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
APO 707

"Special Orders)
:
"No. .....95)

25 April 1946

EXTRACT

"29. The following officers are appointed members of a Military Commission to meet in the City of Manila, Philippine Islands, at the call of the President thereof, for the trial of Kin Ryu Rin, accused war criminal. (Authority: 1st Ind. GHQ, AFPAC, APO 500, 12 Feb 46, to letter GHQ, SCAP, file AG 000.5 (12 Feb 46) LS, dated 12 Feb 46, subj: " rial of Kin Ryu Rin"):

"Col. Archibald L. Parmelee CAC Pres. & Law Member
Col. Francis A. Hause CAC
Col. Edward L. Supple CAC
Lt. Col. Starley N. Boykin, Jr. INF
Capt. Glenn W. Hendricks FA

"The prosecution will be conducted by 1st Lt. Robert A. Dreyer, AC. The Defense Counsel will be 1st Lt. Ivan H. Gordon, TC.

"The Commission will follow the provisions of Letter, GHQ, SCAP, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals," and is authorized to employ or appoint such interpreters, stenographic reporters and other assistants as it shall deem advisable.

" The record of trial including any judgment or sentence will be transmitted directly to this headquarters for action by the appointing authority.

" BY COMMAND OF LIEUTENANT GENERAL STYER:

"OFFICIAL:

"/s/ Benito Morales
/t/ BENITO MORALES,
Colonel, AGD
Asst Adj Gen.

J G CHRISTIANSEN
Major General, USA
Deputy Commander, and
Chief of Staff

"DISTRIBUTION:
War Crimes (60) RESTRICTED"

"MILITARY COMMISSION
Convened by the
COMMANDING GENERAL
UNITED STATES ARMY FORCES, WESTERN PACIFIC

"APO 707
29 April 1946

"SUBJECT: Summoning and Swearing Witnesses for RIN KIN RYU trial.

"TO: Robert A. Dreyer, 1st Lt., AC

"1. Pursuant to authority of provisions of Letter, General Headquarters, Supreme Commander for the Allied Powers, 5 December 1945, subject: "Regulations Governing the Trials of Accused War Criminals," you are authorized, as prosecutor of RIN KIN RYU, referred for trial to the Military Commission convened by the Commanding General, United States Army Forces, Western Pacific, by Paragraph 9, Special Orders No. 95, dated 25 April 1946, to issue, for this Commission, summons to compel the attendance of witnesses to such trial and to require such witnesses to bring with them any papers or documents which may be required as evidence in such trial, and to administer oaths or affirmations to witnesses and other persons.

"/s/ Archibald L. Parmelee
/t/ ARCHIBALD L. PARMELEE
Colonel, CAC
President of Commission"

LIEUTENANT DREYER: The prosecution is now ready to proceed with the arraignment of Kin Ryu Rin, ISN 51J23626.

COLONEL PARMELEE: Is that the correct ISN of the accused?

LIEUTENANT GORDON: That is, sir.

COLONEL PARMELEE: The reporters will be sworn.

(Reporters Margaret M. Montgomery and Marjoria Tittle were sworn as official reporters.)

COLONEL PARMELEE: The interpreters will be sworn.

(Interpreters were sworn.)

The Commission will be sworn.

(The Commission was sworn.)

COLONEL PARMELEE: The prosecution will be sworn.

(The prosecutor was sworn.)

LIEUTENANT DREYER: A certified copy of the Charge and Specification against Kin Ryu Rin, together with a true and complete translation thereof in Japanese, was served upon the accused by Lieutenant Robert A. Dreyer on 22 April 1946 at Nichols Field, Pasay, Rizal, Philippine Islands and on 27 April 1946, certified copies of the same documents were again served upon the accused by Lieutenant Robert A. Dreyer, at the High Commissioner's Stockade, Dewey Boulevard, Manila, P. I.

COLONEL PARMELEE: Does the accused admit service of the Charge, Specification and translation as stated by the prosecutor?

LIEUTENANT GORDON: He does, Sir.

COLONEL PARMELEE: The rights of the accused as set forth in Paragraph 5(b) of Prosecution Exhibit 1 will now be

read and explained to the accused.

LIEUTENANT DREYER: The accused and his defense counsel will now rise and face the Commission: (Reading)

"Rights of the Accused. The accused shall be entitled:

"(1) To have in advance of trial a copy of the charges and specifications clearly worded so as to apprise the accused of each offense charged.

"(2) To be represented prior to and during trial by counsel appointed by the convening authority or counsel of his own choice or to conduct his own defense.

"(3) To testify in his own behalf and have his counsel present relevant evidence at the trial in support of his defense, and cross-examine each adverse witness who personally appears before the commission.

"(4) To have the substance of the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them."

COLONEL PARMELEE: Does the accused fully understand his rights?

LIEUTENANT GORDON: He does, Sir.

COLONEL PARMELEE: Certified copies of the Charge and Specification, together with true and correct translations thereof into Japanese, having been served upon the accused on 2 April 1946 and again on 27 April 1946, and it appearing that the provisions of sub-paragraph 5(b) (1) of "Regulations Governing the Trials of Accused War Criminals", Prosecution's Exhibit 1, have been complied with, whom does the accused desire to introduce as defense counsel?

A (by accused) First Lieutenant Gordon.

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Change of Spec.
Page 9-10

LIEUTENANT DREYER: Is Lieutenant Gordon your duly appointed defense counsel?

A Yes, that is so.

LIEUTENANT DREYER: Will the defense counsel concede that he commenced preparation for the defense of this case on or about 3 March 1946?

LIEUTENANT GORDON: That is conceded, sir.

COLONEL PARMELEE: The Charge and Specification will be read to the accused.

LIEUTENANT DREYER: (Reading)

"GENERAL HEADQUARTERS
"SUPREME COMMANDER FOR THE ALLIED POWERS

"Before the MILITARY COMMISSION convened by the COMMANDING GENERAL United States Army Forces, Western Pacific	)))))	UNITED STATES OF AMERICA vs Kin Ryu RIN

"CHARGE

"Killing a prisoner of war in violation of the laws of war."

"SPECIFICATION

"In that Kin Ryu RIN, then a civilian attached to the Imperial Japanese Army, did, at Cabanatuan, Nueva Ecija, Luzon, Philippine Islands, on or about 11 August 1944, during a time of war between the United States of America, its allies and dependencies and Japan, willfully and unlawfully kill one Lieutenant Robert HUFFCUTT, a commissioned officer in the Armed Forces of the United States of America, then a prisoner of war held by the Imperial Japanese Armed Forces, by shooting

him with a rifle, in violation of the laws of war.

"Dated: 11 February 1946.

"(s) Alva C. Carpenter
"(t) ALVA C. CARPENTER
Colonel, JAGD
United States Army"

"AFFIDAVIT

"Before me personally appeared the above named accuser this 11th day of February 1946, and made oath that he is a person subject to military law and that he personally signed the foregoing charge, and further that he has investigated the matters set forth in the charge, and that it is true in fact, to the best of his knowledge and belief.

"(s) Edmund M. Sweeney
1st Lt. JAGD AUS"

"GENERAL HEADQUARTERS
"UNITED STATES ARMY FORCES, WESTERN PACIFIC
"APO 707

25 April 1946

"Referred for trial to Lt. Robert A. Dreyer, AC, Prosecutor of the Military Commission appointed by paragraph 29, Special Orders No. 95 this headquarters, 25 April 1946.

"By command of Lieutenant General STYER:

"(s) W. P. Moore
"(t) W. P. MOORE
Colonel, AGD
Ass't Adjutant General

"I hereby certify that I have served a copy hereof, together with a true and complete translation thereof into Japanese, on the above-named accused this 27th day of April 1946.

"(s) Robert A. Dreyer
1st Lt. AC
Prosecutor"

LT. DREYER: The prosecution requests that the Charge, Specification, Affidavit of Accuser, Reference for Trial, and the Certificate of Service be incorporated into the record.

COLONEL PARMELEE: There being no objection, it is so ordered. Is the accused now ready to enter his plea?

LIEUTENANT GORDON: Yes, sir. The accused pleads Not Guilty to the Charge and Specification, Sir.

COLONEL PARMELEE: Are the prosecutor and defense counsel ready to proceed with the trial of the accused? Defense?

LIEUTENANT GORDON: The defense is ready.

COLONEL PARMELEE: Prosecution?

LIEUTENANT DREYER: The prosecution is ready.

COLONEL PARMELEE: Both sides being ready, the Commission will proceed with the trial of the United States of America against Kin Ryu Rin.

LIEUTENANT DREYER: Sir, the prosecution waives its opening statement.

The prosecution offers in evidence, as its Exhibit No. 2, a statement written in Japanese, with a fully certified translation thereof. This is offered as one exhibit, both the handwritten Japanese, the typewritten translation, and the certificate of the accuracy of the translation.

LIEUTENANT GORDON: The defense objects to the admission of this statement in the record on the ground it was taken without any statement to the accused that he was testifying against himself, without warning him of his rights, and on the ground that the defendant was testifying against himself in this case.

LIEUTENANT DREYER: Sir, this document is clearly admissible in evidence without conceding the truth of the allegations made by defense counsel. Reference is made to --

LIEUTENANT GORDON: Not allegations, Sir, I am making an objection.

LIEUTENANT DREYER: Your objections are being based on matters of ~~fact~~ which are not in evidence. There is no proof one way or the other whether the accused was warned. Now, in accordance with prosecution's Exhibit No. 1, "Regulations Governing Trial of Accused War Criminals", reference is made to paragraph 4, rather 5(d) (7): "All purported confessions or statements of the accused shall be admissible without prior proof that they were voluntarily given, it being for the Commission to determine only the truth or falsity of such confessions or statements."

LIEUTENANT GORDON: I am not arguing that the defendant was coerced to give the statement. I am arguing that the defendant was not warned as to statements taken from him.

LIEUTENANT DREYER: Sir, there never has been a rule of law that the accused need be warned. The only question that that relates to is the voluntariness of the confession.

LIEUTENANT GORDON: I think it is a rule of law that he should be warned that whatever he says may be used against him.

COLONEL PARMELEE: The Commission will close to consider the objection.

LIEUTENANT DREYER: Sir, would you like us to leave the courtroom?

COLONEL PARMELEE: No.

(Whereupon the Commission retired into Executive Session)

COLONEL PARMELEE: The Commission is in session. It appearing to the Commission that the document objected to by the defense is admissible under the provisions of paragraph 5 of the Letter, General Headquarters, Supreme Commander for the Allied Powers, dated 5 December 1945, Subject: " Regulations Governing Trials of Accused War Criminals", the objection is not sustained.

LIEUTENANT GORDON: Exception, Sir.

COLONEL PARMELEE: Let the record show exception made.

LIEUTENANT DREYER: Let the record show that the prosecution reads into the record the certified translation of prosecution's Exhibit 2.

"Statement of RIN KIN RYU"

"1. Were you at Cabanatuan in August 1944?

Yes.

"2. Were you a guard at that time?

Yes.

"3. On August 11, 1944, did you shoot 2nd Lt. HUFFCUTT?

Yes, I shot him.

"4. Did you shoot him with a rifle?

Yes.

"5. Where were you at that time?

I was standing guard on the 2nd shift of the 1st observation post.

"6. How many rounds did you fire?

Two rounds.

"7. How many rounds hit?

I later heard that the two rounds both hit.

"8. Did you fire both rounds from the observation post?

Yes.

"9. After you fired on him, how long did it seem that he lived?

He seemed to have died immediately.

"10. What was your rank at that time?

I was a civilian guard attached to the army.

" I swear that this statement was made of my own free will and that there were no threats whatsoever."

"/s/ Rin Kin Ryu "

LIEUTENANT DREYER: I now ask that prosecution's Exhibit No. 2 be admitted into evidence.

COLONEL PARMELEE: Admitted.

(Prosecution's Exhibit No. 2 was received in evidence)

LIEUTENANT DREYER: Prosecution calls as its first witness, Colonel John H. Ball.

LIEUTENANT GORDON: At this time, I wish to renew my objection to the admission of the statement in evidence.

COLONEL PARMELEE: Let the record show that the defense objected to the admission of this exhibit, prosecution's Exhibit No. 2 .

LIEUTENANT DREYER: And that the objection was again overruled

COLONEL PARMELEE: Correct.

JOHN H. BALL

called as a witness for the prosecution, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY LIEUTENANT DREYER:

Q Will you please state your name, rank and serial number?

A John H. Ball, Colonel, Field Artillery Corps, 06502.

Q Sir, are you a member of the Regular Army?

A I am.

Q How long have you served in the Army, sir?

A Thirty years.

Q Were you captured by the Imperial Japanese Army, sir?

A I was.

Q Were you ever a prisoner of the Japanese Army?

A I was.

Q Where were you imprisoned, sir, in August 1944?

A Cabanatuan.

Q Did you know Lieutenant Robert Huffcutt?

A Yes, I did.

Q What was his duty prior to the time that he was a prisoner of the Japanese?

A Aide to High Commissioner Sayre.

Q Was he at Cabanatuan when you were there?

A He was.

Q Sir, will you please tell the Commission what the duties, as prisoners, of all the Americans at Cabanatuan were?

A At that time the duties were as prescribed by the Japanese and the major duties consisted of working on the farm, on the garden detail, on the airstrip at Cabanatuan, on the

roads or on the carabao trail going into Cabanatuan.

Q Sir, were commissioned officers required to perform those duties as well as enlisted men?

A Yes, there was no distinction there.

Q Do you know whether Lieutenant Huffcutt was required to perform any labor at Cabanatuan?

A Yes, I know that he did work on the farm because I worked beside him on one or two occasions.

Q Was he working on the farm in August 1944?

A Yes.

Q Did you have occasion to talk to him around that period?

A Yes, early in August or the latter part of July, the last week in July, I could not say the exact time but I got some talinum cuttings from him.

Q You got some what?

A Talinum cuttings, it is a sort of native spinach and it grows there, and he gave me about one and a half dozen cuttings, I guess.

Q What kind of man was Lieutenant Huffcutt?

A I thought he was very well balanced and intelligent, he wasn't one of those to go off the deep end and jump at conclusions, he always had his feet on the ground and he didn't appear excitable at any time, and during the time we were imprisoned prisoners reacted in different ways. Some of them became highly emotional, some others irritable and constantly in an argument or cussing somebody out, and others just wanted to lay there and became melancholy but he seemed to hold his balance about as well as anybody I saw in the camp.

Q Sir, would you please tell the Commission what the hours

of labor were on the farm?

A Seven-thirty -- at seven they started forming to go to work and they would get back at five, with one hour for lunch except those who went to the airstrip. Their lunch was taken out to them and they didn't come back for the noon meal.

Q Now, what was the practice at Cabanatuan with respect to personal gardens?

A You worked your personal gardens in any spare time that you had. You couldn't get out before reveille. As a matter of fact, the tripsto the latrines were limited and at times they had a check-out and they had guards watching you when you went to the latrines and there was an alteration about that time that calls of nature would be answered between reveillein the morning and nine o'clock at night, that was the Japanese order, so that any spare time you had if you could get a piece of ground you could put a garden on it. Now, the gardens varied in size from the size of a table to a little strip along the path. About that time, 1944, the gardens were at their peak. Every available inch was under cultivation with pigweed or anything that you could get to plant and they get out at noon and work to get anything to quan.

Q To what?

A To quan.

Q Spell it.

A Q-u-a-n.

Q What does that mean?

A It is a Filipino term that you apply to anything that doesn't have a name and "quanning", the term "quanning", arose to mean cooking, anything that you have to cook, weeds, or

maybe one of those native eggplants or something like that and cook it. Now at that time, they--- individual cooking was prohibited and in order to take advantage of these little extras that you could get, pigweed or whatever it was, they arranged with the Japanese to have it cooked at a central point in each group. You would put it in a bag or whatever you had, tie it up in a rag, and throw it into one big boiler and those who worked on the farm would usually at noon go to their gardens and get whatever they could and then turn it over to somebody too sick to go out and they would put it in the one boiler so that when they came back they would have extra things to eat.

Q Was the supplementary food produced in those gardens important to the prisoners?

A Extremely so, extremely so.

Q Why was that, sir?

A Because of the very, very limited ration that the Japanese issued.

Q Would you please, sir, describe for the Commission the location of that garden, the general layout of the camp and the portion of the garden with reference to the stockade?

A Do you mean a description of the camp and the relative position of his garden in the camp?

Q Yes, sir.

A The camp in which the prisoners were confined was about 200 yards in an easterly and westerly direction and about 800 yards in a northerly and southerly direction, making a rectangle about 200 by 800 yards. That was divided into three groups, each group taking about one-third of the camp, and I was in

the second group. His garden was about the center of the whole compound and about 75 or 80 feet inside of the east fence.

Q What was that east fence that you spoke of, sir?

A That was a double barbed wire fence built around the north, east, and south sides of the enclosure. The west side had a road running in between, running north and south between the Japanese camp and the prisoners. On that road there were guards patrolling all the time and it had only a single barbed wire fence.

Q Sir, were there any guards on the east side?

A At all times there were guards on the east side of the camp in the daytime, they were on towers, and there were three towers about 30 feet off the ground, about equally spaced, three along the east side of the fence. In the daytime the guards were on those and at night they patrolled and the guard was increased and I imagine they patrolled about 100 meters.

Q Sir, would you please locate the three towers you mentioned with reference to their distance from the northeast corner of the camp?

A They were all about, roughly, 30 feet outside of the enclosure and one at the most northern end was outside group one, perhaps in the center of group one.

Q How far would that be from the northeast corner?

A Approximately 100 yards. I have no way of saying positively, saying what the distance was, but approximately 100 yards. The next one was located opposite the center of group two.

Q How far from the first tower?

A Roughly 250 yards. The third was opposite the center of

group three and that was on the highest ground. The ground sloped to the north. Group three was practically level, group two was sloped to the north, and group one was down in a hollow.

Q How far was the No. 3 Tower from the No. 2 Tower?

A Roughly, 250 yards.

Q Now, Sir, what was there east of the barbed wire fence? What was the character of the terrain?

A Well, in the southeast corner, that is where the farm first started.

Q I am sorry, Sir, I made an error in my question. I didn't mean east of the fence; I meant west of the fence?

A There was an inside guard. I don't know whether that answers your question, but there was a path that the inside perimeter guards walked and those were Americans who were assigned and were on guard at all times to help prevent the escape of American prisoners.

Q How far was that path inside the double barbed wire fence?

A 30 to 35 feet.

Q Where were the gardens with reference to that path?

A They were all west of the path.

Q Now, how far west was Lt. Huffcutt's garden of that path?

A At that particular point, about 40 feet. This--the gardens were all west of the path, but the path did not run in a straight line, and the path was not the boundary for it. Down to about that place a ditch, a drainage ditch from the latrine--now, naturally the open ground was around the latrine area and that was where the gardens were. However, everything was planted around a bahay, but the gardens were down in the latrine area; principally there, because that was the open ground.

Q Now, do you remember when Lt. Huffcutt was shot?

A Yes, I do.

Q About what date was that, sir?

A That was, as I recall it, I wouldn't be positive about the date, but I think it was August 11, 1944. I have no -- nothing to tie it in, except the shooting itself, and it-----

Q Sir, at what time of day did that shooting occur?

A During the noon hour.

Q Did you see it with your own eyes?

A Yes, I did.

Q Will you please tell the Commission what you saw at that time?

A As I walked down to the latrine -- the latrines were on the east side of the compound -- I lived in a bahay on the extreme west side opposite the Japanese officers. I was in this small bahay, and I had to walk across the whole compound to get to the latrine. As I walked down, I saw Huffcutt and another man in his garden. I didn't know the other man; I knew Huffcutt.

Q In his garden, you refer to Huffcutt's garden?

A Yes, sir, in Huffcutt's garden. I went to the latrine, and the latrine ran east and west, and I was facing south toward the latrine. There was a few -- there were a few people working in their gardens south of me and north of me gathering stuff for the evening meal.

Q May I interrupt here to ask another question, sir? Will you please describe the construction of the latrines? What type of walls did they have?

A Built-up walks.

Q Not walks but walls.

A These were the most improved that we had had during the three weeks there. They were an improvised septic tank, a hole built as deep as provisions would permit, and then put a trough with the seat over it, the box seat over it. This was built up about--the trough was built up about 4 feet off the ground on a mound, so you would get drainage down into the septic tank. The washing was done by cutting an oil drum on a bias and running an axle through it, filling it with water and every couple of hours tipping it up and washing the waste matter down into the septic tank. The seat was 2½ feet or three feet on top of that mound.

Q Were there walls to obstruct your view of the surrounding area?

A Oh, no, some did not have a roof on. The one in that particular locality did have a roof on it, a sawali roof.

Q How was that roof supported?

A By four posts.

Q One at each corner?

A Yes.

Q Nothing else?

A No.

Q Excuse my interruption. Will you please go on describing what you saw at that time?

A I heard some people talking to the north of me and I heard a shot. I turned around and I saw the man who had been working with Huffcutt running toward the barracks. I then looked and I saw up in the tower--I saw Huffcutt lying down and trying to get up, and I looked up into the tower and saw the

Japanese sentry with his rifle on the railing that went around the tower - the 2 x 4.

Q Had you heard a shot fired?

A I heard a shot. That is what attracted my attention. I didn't see the shot fired. I watched, and in a very short period of time, perhaps a half minute, I saw smoke from the rifle held by the sentry up in the tower. I heard this shot and I saw Huffcutt who was trying to get up. He was on his knees trying to get up and seemed to be hollering, but I saw him keel over.

Q After the second shot?

A After the second shot.

Q From what tower was that shot fired?

A That was fired from the tower opposite Group 2.

Q How many shots were fired altogether?

A Two, that I know of.

Q Was Huffcutt living after you heard the first shot?

A Yes. He was trying to get up after I heard the first shot. He was lying in his garden and trying to get up.

Q What did you do after the second shot was fired?

A Well, experience had taught me that it was a good thing to get inside the bahay when a Japanese came into the compound, and I hastened to it -- to my own bahay, and I believe Captain Archer was at the latrine when I first came there, and he was talking with us. He would get stuff and we would all pool it and divide it among ourselves, anything we could get. He came in at noon and said: "Did you see that?" Before -- no -- he came in -- we had our mess already -- came shortly afterwards, after I reached there, and said that they shot Lt. Huffcutt.

Q Had you seen Lt. Huffcutt move after the second shot?
A No, I didn't stick around there. It wasn't healthy to be around there, after the Japanese came. There was quite a bit of excitement. They started yelling and the Americans were naturally getting -- when I went up to my own bahay, they were getting there -- because news like that spreads quickly, and this particular case, we thought we had some security or reasonable safety inside the barbed wire fence, but this was considered a deliberate murder, and took what feeling of security we had away from us and created more resentment -- as much resentment as any I know among the prisoners.

LIEUTENANT GORDON: I request that this part of the answer be stricken.

COLONEL PARMELEE: On what grounds?

LIEUTENANT GORDON: I don't believe the answer is responsive to the question put to the witness; I don't think it is relevant to the question and I think it is conclusion on the part of the witness.

LIEUTENANT DREYER: Sir, the prosecution has no objection to striking out that part of the answer which followed: "This was considered".

COLONEL PARMELEE: Does that satisfy the objection of the defense?

LIEUTENANT GORDON: It does, Sir.

COLONEL PARMELEE: Such part will be stricken out.

Q (By Lieutenant Dreyer) Now, Colonel Ball, you definitely saw with your own eyes that second shot being fired?
A Yes, sir.

Q Now, where was Lt. Huffcutt lying after that second shot was fired?

A In his garden.

Q And how far --

A On the eastern edge of his garden.

Q And was that within the permitted boundaries?

A Oh, yes, that was his garden, at least 30 feet from the path.

Q Were Lt. Huffcutt's actions, to your personal observation, always the actions of a rational man?

A Oh, yes.

LIEUTENANT DREYER: No further questions.

COLONEL PARMELEE: Does the defense desire to cross examine immediately or would it be agreeable after a ten minute recess?

LIEUTENANT GORDON: As it pleases the Commission.

COLONEL PARMELEE: You have no objection to a ten-minute recess?

LIEUTENANT GORDON: No, sir.

COLONEL PARMELEE: The Commission will recess for ten minutes.

(Short Recess)

COLONEL PARMELEE: The Commission is in session.

CROSS EXAMINATION

BY LIEUTENANT GORDON:

Q Colonel Ball, what was your grade in the month of August 1944?

A Lieutenant Colonel.

Q Do you know how old a man Lieutenant Huffcutt was?

A Oh, in his late twenties or thirty, somewhere around there.

Q Do you know whether Lieutenant Huffcutt, while he was confined at Cabanatuan while you were there, had ever undergone any medical treatment?

A No, I don't.

Q I believe you testified that the compound was surrounded by a double wire fence, is that correct?

A No, not surrounded. The double wire fence was on the north, east and south sides.

Q But at the point where this incident took place, there was a double wire fence, is that correct?

A Yes, that is correct.

Q What was the perimeter, would you say, inside the double wire fence or next point of delineation?

A That varied in the section of the camp in which you were. It varied in groups, too.

Q Pardon me, Colonel, I am going to confine myself to that vicinity where this incident took place.

A Next was the perimeter guard path.

Q And what came next?

A The ditch, the trench from the latrine.

Q On this perimeter path, there were two ditches, one on

each side?

A Yes, the path was built up. However, there was gravel used and it was elevated, built up by digging dirt from each side and throwing it into the center.

Q And what was the next demarcation?

A Nothing.

Q Do I understand then at this point there was only one perimeter walk?

A Only one in use.

Q Pardon me, Colonel Ball, was there one perimeter path at this point or were there two, not whether they were used or not.

LIEUTENANT DREYER: If the Commission please, I think that Colonel Ball should be permitted to answer that question in his own way. The answer to the question depends upon the interpretation that the witness gives to the word "perimeter path". Does it mean the path along which the guard walked at that time, does it mean where the guard used to walk --

LIEUTENANT GORDON: I will strike out the word "perimeter".

BY LIEUTENANT GORDON:

Q I ask you whether at this point in this vicinity there were two paths.

A May I give you the history of these inside boundaries as I recall it? That, I think, will clarify your --

Q You may give the history and if I do not like it I will stop you.

A Well, first in 1942 the orders were that we could not approach the barbed wire fence which was single at that time, that we could not approach closer than five meters on the west or east side. Now on the east side they never could reduce

it more than two meters because the buildings were against it. They started the perimeter guard in 1942. They just followed the high ground wherever they could get dry footing and the path didn't have any general direction. It curved around and then they started building the new perimeter path which was about 40 feet from the outside barbed wire fence, but they also started building a drainage ditch from the latrine then up in group two which ran parallel, approximately parallel to this path and it was about 40 feet from the path, 30 to 40 feet, something like that, I can't tell exact. Now, in that section where this drainage ditch was at first they announced that the perimeter path, you could not approach it. Later on they announced that that ditch in that particular locality, that drainage ditch was the boundary so that there was no garden. Now, the older path in that section which was in use at that time, that was farther in, that was perhaps 50 feet in, or 60 feet.

Q So that the new path was in between the barbed wire fence and the old path?

A At that point, yes.

Q We will still confine ourselves, unless otherwise stated, to the vicinity in which this incident took place.

A Yes.

Q Do you recall whether there was a single strand barbed wire fence on the easterly side of the compound about that time?

A On the northern side.

Q East and north?

A I don't know about the north, I know it was not in group two.

Q Had one been commenced on any side, particularly on the east side?

A No, that was put up about five days after the shooting.

Q Do you recall whether there was a row of stakes about one and a half feet high in that area on the east side?

A Not at that time there weren't any stakes. Those were also put in when they started to put in this single strand wire to make, to definitely make the limits we could go but they were not in at that time.

Q I believe you said the latrines ran east and west.

A Not all. The latrine that I sat on was about 12 -- the box was 12 by 14 feet long and it ran east and west, but some ran north and south and there were approximately 10 or 12 latrines in the whole enclosure.

Q Now, would you say that the direction of those 10 or 12 latrines was east or west, or north and south parallel to the fence in a line?

A No. In group two where I was located they ran generally east and west.

Q Then they did not run parallel, the boxes --

A No, the boxes ran at right angles to the fence.

Q And you were sitting facing south?

A Facing south.

Q And the incident took place north of you?

A North of me.

Q Did you hear any yelling before the first shot?

A Well, I heard people calling across to one another in their gardens but I paid no attention to it, there was no unusual yelling other than that in every group of men you will

have some shouting across and I heard that, sir.

Q Do you recall hearing any voice which would sound like giving an order?

A No.

Q How far was Lieutenant Huffcutt · shot from where you were sitting?

A Less than 100 yards.

Q Was he shot at a spot where the perimeter walk was?

A He was shot inside his garden. His garden was up against the old perimeter walk and the ditch and at that point there was no garden, there was about 5 feet, something like that, maybe 6 feet, between the ditch and the old perimeter walk. Now his garden came up to the old perimeter walk.

Q Was it the old perimeter walk at that time?

A It wasn't used at that time, and it wasn't used by the guard.

Q I believe you also said that the prison had a guard patrolling the perimeter walk.

A Always.

Q Do you recall whether that guard was on duty at the time this incident took place?

A No, I don't recall that he was on --- I am positive that he was on duty, but I did not at that time make special note of it.

Q In other words, you don't recall seeing the guard at the time the incident took place, you only supposed that was the regulation?

A I can be more than specific because I know well enough that in the military service when you have a 24-hour guard

posted the guard is on there for 24 hours.

Q But you cannot say that the guard was there of your own knowledge?

A No, I can't say that I saw him.

LIEUTENANT GORDON: That is all, sir.

COLONEL PARMELEE: Is there any redirect examination?

LIEUTENANT DREYER: No questions.

COLONEL PARMELEE: Questions by the Commission?

EXAMINATION BY THE COMMISSION

BY COLONEL HAUSE:

Q Could you identify the Japanese who fired the shot?

A I could not; I did not.

Q Do you recall ever having seen the accused before this morning?

A No, I didn't.

BY COLONEL BOYKIN:

Q At this time, how long had it been since the old perimeter path had been used?

A I wouldn't have any way of giving a definite date. I would say a year.

Q Was it considered in any way a line of demarcation?

A Oh,no, no.

COLONEL PARMELEE: Does the prosecution have any questions to ask based on the questions by the Commission?

LIEUTENANT DREYER: No.

LIEUTENANT GORDON: I have one question.

RE-CROSS EXAMINATION

BY LT. GORDON:

Q Did the American prisoners of war have any pseudo friendly relations with the Formosan guards in Cabanatuan?

LIEUTENANT DREYER: I object to that, sir, as immaterial, but if you think it is important, I will withdraw my objection.

LIEUTENANT GORDON: I deem it important, that is why I asked the question.

WITNESS: Will you repeat the question?

Q I said, did the American prisoners of war have any pseudo

friendly relations with the Formosan guards in Cabanatuan?

A. I know they couldn't get friendly with them, but-- I have no direct knowledge of it, but I have reason to believe that a few of them sold through the fence--sold rice through the fence. I never had money enough to buy any.

Q Would you say the American prisoners were treated in a better fashion by the Formosans than they were by the Japanese?

A No, the same pattern. They were trained by the Japanese.

BY COLONEL BOYKIN:

Q Do you know the number of this tower from which the man was shot?

A No, I don't know.

Q Do you know whether they had a numbering system?

A No, I don't believe they had a numbering system for it. It was opposite No. 2.

COLONEL PARMELEE: The witness will be excused.

(Witness Excused)

LIEUTENANT DREYER: The next witness will be Sgt. Bogie.

. THOMAS H. BOGIE

a witness for the prosecution, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY LIEUTENANT DREYER:

Q Sergeant, will you please state your name, grade and Army serial number?

A Thomas H. Bogie, 6714829, Staff Sergeant.

Q How do you spell your last name?

A B-O-G-I-E.

Q How long have you been in the Army?

A I enlisted February 17, 1935.

Q Have you been in the Army ever since?

A Yes, sir.

Q Where were you stationed prior to the outbreak of the war?

A I was with the 31st Infantry which was stationed in the Walled City, Manila.

Q What were your duties with the 31st Infantry?

A Platoon sergeant in the rifle company.

Q Did you perform any guard duties?

A Yes, sir.

Q Did you guard the American High Commissioner's Residence?

A We had a sentry at the gate, yes, sir.

Q What did you do in connection with the guard detail at the High Commissioner's Residence?

A After the guard at the post had been relieved, I would go around to see that the relief was instructed as to the special orders pertaining to the post.

Q What was your grade?

A Buck sergeant.

Q Did you know Lt. Huffcutt?

A I didn't know him personally, sir, but I have seen pictures of him posted at the guardhouse for authorized persons to leave after office hours.

Q Was his picture posted to enter after hours?

A Yes, sir.

Q Were you captured by the Japanese?

A Yes, sir.

Q Where?

A Corregidor.

Q Were you imprisoned at Cabanatuan?

A Yes, sir.

Q At what time?

A From July until November of 1942. I left there in November and I returned again the first of August, 1944.

Q Now, will you please describe to the Commission the layout of Cabanatuan Prisoner of War Camp?

A The camp is about 200 yards wide and about 800 yards long. It had three sentry posts, towers on the east side. There was a double barbed wire fence about 8 feet high around the entire post.

Q Sergeant, how were these three sentry towers spaced along the eastern most boundary?

A There was one about 100 yards from the corner and then about 300 yards down, I would say, and then at the far end about 100 yards from the end there was another one.

Q Go on with your description of the barbed wire fence.

A It was a double fence, upright poles, and poles slanting out with barbed wire between them.

Q Was it easy for a man to go through?

A No, I am positive a man could not go through without wire cúttors.

Q Now, was there a road or a pathway between the barbed wire fence or in the vicinity of that barbed wire fence and outside?

A On the outside there was a path which the Japanese used to post their guards or relieve their guards. They used it outside of the fence.

Q Was there any means of ingress along the eastern barbed wire fence?

A No, sir, there was no gate or outlet or inlet at all. The only way they came in was through the main gate and when they posted their relief they went all along the camp.

Q Now, sergeant, was there a path inside the fence?

A Yes, sir, there was a path used by American guards that patrolled.

Q How far was that path inside the fence?

A I would say about 35 to 40 feet inside the fence.

Q How wide?

A Between 3 and 4 feet wide.

Q Was there anything on either side of that path?

A Yes, there was a ditch on either side due to the fact that when we constructed it we dug a ditch and built the walk way.

Q Now, proceeding westerly from those ditches and the path in between, what was the next thing?

A West of the ditches there was a row of gardens along there that enlisted men and officers had.

Q In what group or division were you?

A Well, I was in Group 2 at that time. It was in the middle

of the camp.

Q Did you see Lt. Huffcutt at Cabanatuan in August of 1944?

A Yes, sir, I did.

Q Do you remember the time when Lt. Huffcutt was shot?

A Yes, I do.

Q Now, I believe you testified that you arrived at Cabanatuan for the second time on 1 August, 1944.

A That is right, sir.

Q How long after you arrived did the shooting of Lt. Huffcutt take place?

A Well, the first week after I arrived at Cabanatuan, I worked in the corral taking care of carabaos and Brahma steer, and it happened I should say about five days after I was relieved from that job.

Q Now, did everyone work at Cabanatuan?

A Yes, sir, everybody that was able to walk worked.

Q Was Lt. Huffcutt working?

A Yes, sir.

Q Do you know what his job was?

A Well, they alternated. One day he would work on the farm, the next day on the airport building revetments.

Q Would you describe to the Commission the operation of these gardens?

A Well, in the evening they didn't have much time to work on them; from the time you got in from work, ate and stood roll call, it was dark. In the morning you didn't have no time whatsover for yourself, so generally you would knock off work from 11:30 to 12 o'clock. You would eat dinner and go back to work at 2 o'clock. In that time you would go out in the garden and pull

up weeds and harvest. The garden was not owned by one man. You would take what was ripe and cook it for the evening meal.

Q Were those gardens important?

A Yes, sir, very important.

Q For what reason?

A To keep yourself alive if you were lucky enough to have one of them.

Q Now, at what time of day was Lt. Huffcutt shot?

A After dinner, I would say between 12:30 and 1 o'clock.

Q Did you see it with your own eyes?

A I did, yes, sir.

Q Will you tell the Commission what you saw?

A I was in the vicinity of the latrine, speaking to another sergeant by the name of Rosenfelt, and conversation was about our own outfit. All of a sudden, we heard a shot. We didn't know where it came from right away. We were looking around, at the guard tower.

Q Just a moment, will you describe to the Commission the construction of the latrine at which you were sitting?

A The latrine was up on a hill on the east side of the camp and it was built up, oh I guess, 4 feet off the ground. They had dug a hole and they had piled the dirt up and it was about 4 feet high, and it was covered with timbers and they had a box built on top of that.

Q Was there a roof over the latrine?

A There was 4 poles supporting a nipa top. That was the only thing over the latrine.

Q Was there anything obstructing your view of the tower?

A No, sir.

Q Could you see Lt. Huffcutt's garden from the tower?

A Yes, sir, you could.

Q How far was Lt. Huffcutt's garden from the tower?

A I should say about 100 feet, sir.

Q How far were you from Lt. Huffcutt's garden?

A I was about 75 yards from Lt. Huffcutt's garden.

Q How far were you from the tower?

A I would say 100 yards, sir.

Q Will you go on describing what you saw at that time?

A Well, after the first shots, I seen Lt. Huffcutt. He was lying down and he was trying to get up. He was lying on his stomach and he looked like he was trying to get up and he was calling for help. At that time, we had seen the sentry up on the tower and from the time of the first shot, I guess it was about maybe 45 seconds until the second shot; after the second shot, why he fell down again. He didn't move.

Q Did you see the guard fire the second shot?

A Yes, sir, I did.

Q Did you hear the report?

A Yes, sir.

Q From what tower was that shot fired?

A That was in the middle tower.

Q What happened then?

A Japanese officer of the day, Japanese sentry and two American officers came out to see Lt. Huffcutt. They examined him and one of the officers left and 4 enlisted men came back with a stretcher and they carried him from his garden to the path, the perimeter path, around the perimeter path into the hospital area. They passed right by where I was at that time.

Q You were still at the latrine watching what was going on?

A Yes, sir.

Q What was his appearance?

A He looked like he was dead to me. They had covered him with a blanket and carried him out on the stretcher.

Q Where was he lying immediately prior to the time they moved him?

A He was lying on the inside of his garden because when they picked him up they had to cross the path.

Q Were Americans permitted to work west of that path?

A Yes, they were, yes, sir.

Q And how far west of the perimeter path was Lieutenant Huffcutt lying after the second shot?

A I would say 15 feet, sir.

Q Did the guard in the tower come down from the tower at any time?

A No, sir, I don't believe he did. I believe he was relieved about one-half hour after the incident took place.

Q Were other guards relieved at that time?

A Yes, sir.

Q Were there any stakes in that vicinity at that time?

A There had been a number of stakes, sir, marking off the boundary in which we could go, the distance between the fence and where we were allowed to go. I believe that they were about 30 feet from the main fence and that was the boundary the Americans put up to keep us away from the fence so there would be no trouble.

Q That was between the barbed wire fence and the path?

A Yes, sir.

Q And you were permitted to go up to that line of stakes?

A Yes, at one time but we were not allowed to go beyond that. They revoked the orders.

Q How far inside the perimeter was Lieutenant Huffcutt?

A The perimeter path, the gardens, came right up to the gardens.

Q There was a ditch to the west of the perimeter path?

A Yes, sir. It was about one yard wide, I should say, sir.

Q How far would you say Lieutenant Huffcutt was within

that perimeter path after the second shot?

A About 15 feet.

LIEUTENANT DREYER: That is all.

Just a moment, please, may I ask another question?

BY LIEUTENANT DREYER:

Q Do you know where Lieutenant Huffcutt was buried?

A He was buried the same day, sir, I believe in a graveyard at the far end of the camp.

Q Do you know how long he lived after the second shot was fired?

A I believe he died instantly, sir.

LIEUTENANT DREYER: That is all.

CROSS EXAMINATION

BY LIEUTENANT GORDON:

Q Besides the double wire outside fence in this vicinity was there any other wire fence?

A At that time I couldn't say, sir. I wasn't familiar.

Q I believe you were a witness for the prosecution on the General Kou case?

A Yes, I was.

Q Do you remember having this question put to you:

"Q How far was the fence?

"A There were two fences.

"Q The outside fence?

"A I would say about 50 to 60 feet."

Does that refresh your recollection any?

A That fence, sir, was to the north of the stakes I first told about. They had been put up to keep us away from the main fence.

Q How many paths were there in that vicinity at that time?

A There was one path that I remember and that was the one the perimeter guard walked on.

Q Had there ever been another path, do you recall?

A There may have, sir, but I don't recall.

Q These latrines, they were square boxes built independently of each other, is that right?

A Yes, sir. They were spread out along the east end of the camp.

Q East end of the camp?

A Yes.

Q Were they parallel to the fence?

A No, sir, they ran north and south.

Q You mean they ran at right angles?

A That is right.

Q When you were sitting on the latrine did you see Lieutenant Huffcutt in his garden?

A Yes, sir, I did.

Q What direction were you facing?

A I was facing south.

Q Did you hear any yelling at the time?

A No, sir, I didn't.

Q Again, I refer to your testimony in the General Kou case. " I don't remember what he was yelling. Then we heard the guard in the tower which was about 80 yards away from where he was, maybe 100 yards, yelling 'Kuday'. As far as I know it is like 'Hey' in Japanese."

Do you recall that testimony?

A Yes. He yelled "Kuday".

Q May I read your entire answer to the question? I will read the question first.

"Q Will you explain to the Commission what you saw?

"A It was just around noontime and I and a buddy of mine -- a Staff Sergeant -- who was in the latrine. We seen two men working in their little garden which was about as far as from here to the High Commissioner's home. It was natural to see somebody working out there, so we didn't pay any attention to it. We was talking, heard a shot. One of the men run from the garden into the barracks. One was laying on the ground and he was yelling. I don't remember what he was yelling. Then we heard the guard in the tower which was about 80 yards away from where he was, maybe 100 yards, yelling 'Kuday' as far as I know it is like 'Hey' in Japanese. I don't know what it means."

Q How long after you heard that did you hear the second shot?

A Well, it was just a matter of seconds, sir, I couldn't be exact.

Q Between the first and second shots did you see Lieutenant Huffcutt?

A Between the first and second shot?

Q Between the first and the second shot.

A He was lying down on his stomach.

Q Where was he lying?

A He was lying in his garden, sir.

Q These four enlisted men whom they called to take the body away, were they Americans?

A Yes. I believe they were corpsmen, sir.

Q How far would you say you were sitting from where the

body was at the time of the shooting?

A Oh, I would say 100 yards, roughly, sir.

LIEUTENANT GORDON: That is all, sir.

COLONEL PARMELEE: Any cross-examination by the Commission?

EXAMINATION BY THE COMMISSION

BY COLONEL HAUSE:

Q Can you identify the Japanese who fired the shot?

A No, sir, I can't.

Q Did all the latrines run north and south or were some east and west?

A They all run north and south.

Q They all did?

A Yes, sir.

COLONEL HAUSE: No more questions.

COLONEL PARMELEE: The witness is excused.

(Witness excused.)

LIEUTENANT DREYER: The prosecution rests, sir.

LIEUTENANT GORDON: The defense is ready to proceed, your Honor.

COLONEL PARMELEE: The defense may proceed.

LIEUTENANT GORDON: There is no opening statement by the defense. We call as our first witness the defendant himself.

KIN RYU RIN

called as a witness by the defense, was sworn and testified through Interpreters Osato, Motoyoshi and Baba as follows:

DIRECT EXAMINATION

BY LIEUTENANT GORDON:

Q What is your name?

A Kin Ryu Rin.

Q What is your last name?

A Rin.

Q What is your first name?

A Kin Ryu.

Q How old are you?

A Twenty-four.

Q Where were you born?

A Formosa.

Q When were you first employed by the Japanese Imperial Army?

A August, 1942.

Q In August, 1944, in what capacity were you attached to the Japanese Army?

A To guard the prisoners so that the prisoners will not escape.

Q Where were you employed to guard the prisoners?

A At Cabanatuan.

Q Do you remember during the month of August 1944 at Cabanatuan the incident of the killing of an American Second Lieutenant, an American prisoner of war?

A Yes, I do know.

Q At what time of the day did you go on guard duty?

A I went on duty at 8:00 A.M. in the morning.

Q Where were you stationed at about noon on the 11th of August 1944, the day about which I am talking?

A I was on the observation tower, guard tower.

Q Will you tell the Commission exactly what happened at that time on that day.

A Between 11:30 and 12:00 P.M., a prisoner was outside of the zone which was marked as off-limits and he was attempting to escape from there.

Q Had you ever seen this prisoner before that day?

A I did not see.

Q I show you a diagram or sketch and ask you what this is?

A This is the Cabanatuan prison where at that time the case occurred,and this is one portion of the camp.

Q Do you know who drew that sketch?

A I drew it.

LIEUTENANT GORDON: I wish to offer this sketch in evidence as Defense' Exhibit A.

COLONEL PARMELEE: Objection by the prosecution?

LIEUTENANT DREYER: Yes, sir, I do not think the proper foundation has been laid as yet for the introduction of this sketch in evidence. The defense has not shown that it is a true and accurate representation of the scene at that time. If you ask the question and get the answer, I will have no objection.

BY LIEUTENANT GORDON:

Q Does this sketch show a true and accurate picture of the place where this incident took place on August 11th, 1944?

A Yes, it is so.

LIEUTENANT GORDON: I now offer this sketch in evidence as Defense Exhibit A.

LIEUTENANT DREYER: Without conceding, of course, the accuracy of the sketch, the prosecution has no objection to

the introduction of this sketch in evidence. However, we do object and object strenuously of the legends drawn on the sketch, I don't know by whom, "Position first shot towards sky", "Position called 'halt'." Except for those two legends, the prosecution interposes no objection to the introduction in evidence.

LIEUTENANT GORDON: The defense will explain the diagram and those two positions in the diagram as it goes along.

COLONEL PARMELEE: The Commission will accept the sketch in evidence and will note the statements made by counsel qualifying its possible accuracy.

(Defense Exhibit A was received in evidence.)

BY LIEUTENANT GORDON:

Q Will you take this sketch and show me where you first saw the prisoner at whom fired?

A It is here, pointing to the little arrow here.

Q Is that near one of the latrines?

A I came up from between the first and second latrines.

Q You mean he came out?

A I was on the tower and the prisoner came out from between the first and second latrines.

Q How many shots did you fire at the prisoner?

A I fired one round.

Q Did you hit him?

A This one round hit the prisoner.

Q Did you fire any other rounds at the time?

A I will start from the beginning because I cannot get the sequence of the thing straight. The prisoner came out from between the first and second latrines and I saw him enter

into the zone which was supposed to be the off-limit zone. On the inside part of the zone, there was a shallow ditch there, and on the outer side of the zone, which was beside the road, was very deep which was used to wash out the latrines. These lines indicate the starting of the construction of the barbed wire entanglements. When the prisoner came to the embankment of the off-limit zones, I yelled to him to go away about four times, and waved my hand at him. However, the prisoner kept on walking without taking any heed. The prisoner walked across from the embankment, not in a normal pace, but in a rather rapid pace, and I yelled at him four times. I didn't care to shoot anyone, so I yelled at him. However, he did not stop, and at the same time there were many prisoners at the latrines, and they, too, were yelling at the person. Now, when the prisoners standing near the latrines yelled at the person going out, the guards in the guardhouse heard the yelling and ordered me to fire at the prisoner. The first round I did not shoot at him. I aimed into the sky and fired. However, he crossed the path which was supposed to be the path which the sentries patrolled, and the prisoner crossed about a meter over to the path and was escaping, therefore I felt that I had to shoot him or otherwise violate the orders that I have been given. Therefore I shot him.

Q Is he going on?

A I have some more. After I fired the first round at the prisoner, he fell, and rolled over and rolled into the shallow ditch which was next to the path. When the prisoner crossed over the path, I had to shoot him because it was the orders of the Japanese Army, and also the special orders of the sentinel, and if I did not shoot the prisoner, I would

have been court-martialed. However, in this case I shot the prisoner in line of duty, and therefore I was not punished. I was instructed by Lieutenant Colonel Takasaki and his subordinates that any prisoners getting on the mound, embankment, which is considered the off-limit line for the prisoners, to be shot as escaping prisoners, and on that day I also received specific instructions from the guard detachment commander. Since I am a Formosan, there has been a great amount of discrimination by the Japanese soldiers, and therefore we give out friendships with the prisoners. There have been instances where I was caught giving cigarettes to the prisoners, and was ordered to line up with the other prisoners and face each other and slap each other's cheek.

LIEUTENANT DREYER: Will you please read that answer?

(Answer read.)

INTERPRETER: Line up with the others.

LIEUTENANT DREYER: Other whom?

INTERPRETER: Guards, other soldiers.

BY LIEUTENANT GORDON:

Q How far was the prisoner from you when you first saw him?

A The distance between the latrine and the place where I first saw him, if you take a direct line, is about 16 meters, and then from there to the guard tower, it is about 50 or 60 meters.

Q Where was the prisoner when you fired your first shot? How far was he from you?

A The first shot which I fired into the sky the prisoner was about 60 meters away.

Q How far was the prisoner from you when you fired the second shot which killed the prisoner?

A Between 60 to 70 meters away. I shot him when he got onto the guard path.

Q On the date when this incident took place, and at the time it took place, how many paths were there in the vicinity?

INTERPRETER OSATO: Between these two areas here (indicating on map)?

Q Yes, how many paths were there between you and the latrines?

A There was this path which the guards walked, it shows there, and also the off-limit area which was set by the Japanese Army. There were two paths.

Q How many fences were there in that vicinity, wire fences?

A On the outside there were a double strand barbed wire fence and in this off-limit outside just on the perimiter of the off-limit area the barbed wire fence was being constructed and it did not completely go around and there was an opening here.

Q At the area where the killing took place, the prisoner had to cross both gravel paths before he reached the outside barbed wire fence, is that right?

A Yes. Crossing the second path, the body was there.

Q Do you recall making a statement recently to the Investigating Detachment in which you stated that you later heard that there were two rounds fired at the body and both had hit?

A I heard from the investigating officer that there were two wounds caused by a single bullet and I also heard this when I was still in the prisoner-of-war camp from the commanding officer also.

Q I wish to withdraw that question, Sir, I don't believe the prisoner understands what I wish to get and I will ask him that--

LIEUTENANT DREYER: The prosecution objects very strenuously to the withdrawal of any question which is already answered in the record. The question has been asked and it has been answered. I admit it is somewhat of a boomerang.

COLONEL PARMELEE: Does the defense feel it is not getting a response due to difficulty of translation?

LIEUTENANT GORDON: That is right, Sir.

INTERPRETER OSATO: It has been mixed up. When I said it was at the camp we thought he meant when he was in the American prisoner-of-war camp. What he meant was that when he was in Cabanatuan he heard that there were two wounds on the body caused by a single bullet and when he was investigated by the investigating officer he was told that there were two wounds.

LIEUTENANT DREYER: What investigating officer, Japanese or American?

INTERPRETER OSATO: That was after he was taken prisoner of war.

LIEUTENANT DREYER: War Crimes?

INTERPRETER OSATO: Yes, sir.

LIEUTENANT GORDON: You say he was getting a bit confused?

INTERPRETER OSATO: Yes, sir.

COLONEL PARMELEE: Do you desire to have the answer stand in the record?

LIEUTENANT GORDON: Yes, Sir.

COLONEL PARMELEE: Very well.

BY LIEUTENANT GORDON:

Q Who was the Sergeant of the Guard at the time this incident took place?

A Sho Hattori was the sergeant.

Q Who was the commander of the guard on that day?

A 2nd Lieutenant Kaseno was the officer.

Q Who was the acting commander of Cabanatuan on that day, do you know?

A Major Takasaki.

Q Who was Lieutenant Toshino?

A Lieutenant Toshino was the commander of the security unit and on that day when the incident occurred Major Takasaki was in Manila and Lieutenant Toshino was acting commandant.

Q Was there any official inquiry made and at which you attended, of this incident by the Japanese officers at Cabanatuan?

A I have not attended any inquiry.

LIEUTENANT GORDON: That is all.

COLONEL PARMELEE: The Commission will recess for ten minutes.

(Short recess.)

CROSS EXAMINATION

BY LT. DREYER:

Q Rin, did you ever see prosecution's Exhibit No. 2?

A Yes, I have.

Q In whose handwriting is prosecution's Exhibit No. 2?

A I wrote this.

Q You wrote that yourself, didn't you?

A Yes, that is so.

Q I was there when you wrote it; do you remember that?

A Yes, I do know.

Q I didn't hit you, did I?

A No.

Q I didn't beat you?

A No.

Q I didn't threaten you in any way?

A No.

Q And you gave that statement of your own free will?

A Yes.

Q And you said what you did say because it was true, didn't you?

A Since I do not understand the Japanese language very well I did not understand some of the questions and there have been some errors here. There are some errors here.

Q Now, you testified at great length in response to the questions of Lt. Gordon, haven't you?

A Yes, through the interpreter I got many of the questions clarified; clarified most the answers also.

Q Now, your direct examination here today, was that conducted in the Formosan language?

A This morning was in Japanese.

Q And all of the questioning that you have been subjected to has been through a Japanese interpreter in the Japanese tongue, isn't that correct?

A Yes, it is so.

Q And you have no difficulty in understanding the court interpreter, do you?

A Since I do not understand it very clearly, I frequently asked you several times to reword the questions.

Q And the questions were reworded in Japanese?

A Yes, it is so.

Q You write Japanese, don't you?

A I can write Japanese but I cannot write anything which is delicate or requires profound thinking.

Q You read Japanese, don't you?

A I can read Japanese, but I do not understand the meaning very clearly.

Q Now, when I asked you the questions at the time we wrote prosecution's Exhibit No. 2 , you wrote down my questions with your own hand in Japanese, didn't you?

A Yes, I took it down here, but there are places where I do not understand the words very clearly.

Q You wrote down the questions in Japanese and you wrote down the answers as you understood the questions in Japanese, isn't that true?

A Yes, that is so.

Q It was all very friendly, wasn't it?

A Since there is a racial difference in the presence of a white man, many times I feel at loss and I cannot find words that are adequate to express myself.

Q Now Rin, will you look at question 7 and your answer to question 7? Will you read that question and answer to the Commission?

(Question and answer read aloud by the accused)

Now I just want you to read what you wrote; nothing else.

(Question and answer read)

Q Translate it.

INTERPRETER: "How many rounds hit the prisoner?" That is the question. The answer is:"Later on I was told that two rounds hit the prisoner."

LIEUTENANT GORDON: Just one moment. Is that the exact translation?

INTERPRETER: English syntax will not fully apply to the Japanese syntax and in this case here, a person is denoted, this phrase--which denotes a third person or superior ordering him to sit there and listen to what he has to say, but by this you cannot say who the person was or what rank the person held. It just said that two rounds hit the prisoner. That is what he was told later on.

LIEUTENANT GORDON: Is the word 'prisoner' there?

INTERPRETER: If you want the word 'prisoner' left out, I will.

LIEUTENANT GORDON: Pardon me, sir, if the Commission please, the reason I question the interpretation is not how many rounds, it is the 'prisoner'. I want to point out there is difficulty in translating.

LIEUTENANT DREYER: Everybody knows that.

LIEUTENANT GORDON: If we are going to question the defendant's ability to translate from English to Japanese and vice versa, I want to give the prisoner the benefit of the

doubt.

LIEUTENANT DREYER: I want to give the prisoner every benefit, but there is no question about whom we are talking. Is it the contention of the defense that no rounds hit?

LIEUTENANT GORDON: No, I am not talking about the founds but about the translation. I am trying to show that even though the question is read by the defendant to the official interpreter, the official interpreter doesn't interpret it accurately.

LT. DREYER: Just a moment, let me answer your argument. I think the Commission knows fully well no foreign language is translated in identical words by two interpreters, but the substance is the same.

LIEUTENANT GORDON: We are having a translation to questions which were put to the defendant at some time by the prosecution's investigating detachment. I think the translation should agree to the translation in evidence.

INTERPRETER: Sir, I don't think any two interpreters can translate a document and have the same wording.

LIEUTENANT DREYER: You are sworn as an interpreter. Is the translation which is given and sworn to by Takaki an acceptable translation?

INTERPRETER: Yes, sir, it is.

BY LIEUTENANT DREYER:

Q Now when you wrote this prosecution's Exhibit No. 2 you didn't say anything about two wounds, did you?

INTERPRETER: Will you please repeat the question.

(Question repeated)

A I did not write.

Q Now, were you friendly to the American prisoners?

A Yes, I was friendly.

Q You always treated them with kindness, courtesy and consideration?

A Yes, that is so.

Q Rin, did you ever beat any American prisoners?

A No, I haven't.

Q Are you absolutely sure that you never, during the entire time you were a guard at Cabanatuan, beat a prisoner?

A Yes, it is certain that I did not beat any prisoners.

Q Do you recall once having ordered a prisoner to pick up large beans and that prisoner only picked up small beans?

A My specific mission is not to let the prisoners escape, and what happens in the camp I do not know.

LIEUTENANT DREYER: I move to strike that answer as not responsive.

COLONEL PARMELEE: Are you going to press for a more responsive answer?

LIEUTENANT DREYER: Yes, sir.

COLONEL PARMELEE: Let the record stand and repeat the question.

Q Now, I will ask you one more time. Do you remember you were in charge of the prison detail, that you asked an American prisoner to pick up large beans, and although you asked him to do that, he only picked up small beans? You remember that?

A I do not remember.

Q All right. Do you remember once that you had a 100-man detail and that you missed one prisoner out of that detail, and you looked for him and you found him asleep. Do you remember that?

A I do not remember.

Q Do you remember certain Japanese non-commissioned officers named Nagai, Fujita, and Mishikawa?

A Yes, sir, I do know.

BY LIEUTENANT DREYER:

Q Did they ever tell you to beat prisoners?

A These non-commissioned officers had never told me directly to beat a prisoner.

Q Did they ever tell you indirectly to beat a prisoner?

A My chief duty is not to let the prisoners escape and therefore they do not give me orders directly and also they have men who are assigned to the maintenance of the camp and they are under these non-coms.

Q Well, sometimes you worked on the farm detail, didn't you?

A I went there as a guard.

Q And did your orders require you to prohibit loafing on the job by American prisoners?

A My job is to see that no prisoners escape and therefore we had no relations with the running of the camp.

Q Did not Lieutenant Okamoto and Major Takasaki tell you to beat prisoners who refused to work or obey orders?

A I was never told to beat prisoners. During the evening, during roll call, the guards, those who were assigned to the running of the camp, are present and at that time those who were in charge of details and running of the camp were instructed to beat prisoners. However, we just guard the prisoners so that they do not escape and we had no connection with those orders.

Q Now, Rin, tell the Commission the truth. Did you really think on August 11, 1944, that Lieutenant Huffcutt was trying to escape? Do you really believe that and did you believe that at that time?

A Yes, I really thought that Lieutenant Huffcutt was going to escape.

Q Now, let us look at that picture. This happened at about noon, is that correct?

A Yes, it was from about 11 to 12 noon.

Q The sun was high in the sky?

A Yes.

Q Your guard tower overlooked the garden?

A Yes, I could see it.

Q Between Lieutenant Huffcutt and the garden there was a double barbed wire fence?

A Yes, there was.

Q Was there another fence between the double barbed wire fence and his garden?

A Yes, there was one but it wasn't completely finished.

Q Rin, was there a gate in the double barbed wire fence that was wide open at that time?

A No.

Q No gate. How high was that double barbed wire fence?

A It is about the height of that door there.

LIEUTENANT DREYER: Let the record show that the witness indicated a height of about 8 feet.

Q You were up in the tower all the time, weren't you?

A The duties vary and there are days when I don't go there and days when I go there.

Q But on that day you were up in the tower?

A Yes.

Q And you had a rifle with you, didn't you?

A Yes, I had a rifle.

Q And in that rifle were live bullets, weren't there?

A Yes.

Q And the prisoners knew that, didn't they?

A That I cannot say.

Q If they looked up in the tower they could see you up there, couldn't they?

A Yes.

Q And you could see them?

A Yes.

Q Now, Rin, I am not the only American officer who has spoken to you about this case, am I?

A Yes, there are others, too.

Q Do you remember Lieutenant Owens who spoke to you at Branch Camp No. 5, Nichols Field, about this case?

A That is the Mariquina Camp No. 5?

Q Camp No. 5, right. And do you remember that he had a Nisei interpreter with him by the name of James Iwanaga.

A I don't remember the name but there was one interpreter with him.

Q And they asked you about this case about five days before Christmas of last year. Do you remember that?

A I do not remember clearly when it was but it was the middle of December.

Q Well, do you remember that they wrote a lot of things down and when they got to the end it was translated to you and you signed it? Do you remember that?

A I do remember but there were many places in which I could not understand the Japanese.

Q Well, then, let me show you this piece of paper and ask you if that is your signature at the end of it.

A Yes, that is my name.

LIEUTENANT DREYER: I ask that it be marked as Prosecution

Exhibit No. 3 for identification.

BY LIEUTENANT DREYER:

Q And did you write your initials on each page of Prosecution's Exhibit No. 3 for identification?

A Yes, I wrote that.

Q Now, neither the interpreter nor the officer who was with him on that day beat you or hit you or threatened you, did they?

A They did not strike me buf theythreatened me.

Q They what?

A They threatened me.

Q Do you remember that the second sentence of Prosecution's Exhibit No. 3 says -- rather, the first and second sentences read as follows: "I, Rin Kin Ryu, make the following statement of my own free will to Second Lieutenant C. M. Owens and T/4 James Iwanaga. No threats or promises have been made to me." And then the third sentence: "I realize that I do not have to make this statement and that it may be used in court against me." And then at the very end it says: "This statement has been read to me in Japanese by T/4 James Iwanaga. I understand it and swear it is true." Do you remember that?

A Because I could not understand the language very clearly I don't feel that I understood everything exactly.

Q Now, Rin, I asked you a very simple question. I asked you to tell the Commission whether you were able to recall making the statement that no threats were made, no promises were made, and that you realized the statement could be used against you in court, and that you swore it was true. Don't you remember that? Tell the truth.

A Yes, I remember about the fact that I did not have to

make the statement, that it might be used in court against me but at that time the investigator was quite severe with me. At that time the investigator was very severe in pressing me by saying that what I was saying was not the truth. He told me that they had investigated the rules of the Japanese Army and the rules did not state that escaping prisoners were to be shot or those who did or loafed in the field were to be struck and he was the only one who said that what I was saying was not the truth.

COLONEL PARMELEE: The Commission will recess until 1330 hours this date.

(Whereupon, at 1145 hours, 29 April 1946, the Commission recessed to convene at 1330 hours, 29 April 1946.)

A F T E R N O O N S E S S I O N

The Commission convened pursuant to noon recess at 1330 hours at Court No. 1, High Commissioner's Residence, Manila, P. I.

COLONEL PARMELEE: The Commission is in session.

LIEUTENANT DREYER: With the exception of Colonel Supple; the accused, the Commission, defense counsel and prosecution are present and ready to proceed.

KIN RYU RIN

the accused, on the stand at the time of the noon recess, resumed the stand and was further examined and testified as follows through the official interpreter:

LIEUTENANT DREYER: Rin, may I remind you that you are still testifying under oath?

(Interpretation made to the accused)

CROSS EXAMINATION (Cont'd)

BY LIEUTENANT DREYER:

Q Now, after Lt. Huffcutt was shot, did Lt. Toshino talk to you about the shooting?

A No, he did not.

Q Did you tell the Nisei interpreter and the Lieutenant who interrogated you at branch camp No. 5, this, and I quote: QCaptain Toshino, captain of the guards, told me in the presence of all the guards, that I had shot too fast, that the killing was not necessary, that in the future, everything should be done to avoid killing the prisoners"?

A No, he did not.

Q Now, then, Rin, when I asked you whether there were any beatings or threats made at the time you signed Prosecution's

Exhibit No. 3, I recall, I think, that you testified there were some threats made. Now, do you recall the last sentence of that statement: "I understand it and swear it is true", after which you signed your name?

A That is not so. I was threatened and the investigating officer called me and told me that I was not telling the truth and he fingered his revolver and I figured at that time it would be foolish to be killed and I did what the investigator ordered me to do.

Q You did, however, sign the statement which contained the sentence, "I understand it and swear it is true"?

A I don't know whether this statement is right or wrong, but I signed it because I was threatened by the investigating officer.

LIEUTENANT DREYER: I offer prosecution's Exhibit 3 in evidence.

COLONEL PARMELEE: Objections by the defense?

LIEUTENANT GORDON: The defense interpreter claims that the translation of the last answer was not correct.

LIEUTENANT DREYER: In what respect, sir?

LIEUTENANT GORDON: I would rather take it up with the interpreter before I bring it to the attention of the Commission.

(Discussion between Lt. Gordon and the Interpreter)

LIEUTENANT GORDON: It is all right, sir. It is not necessary to have it explained further.

COLONEL PARMELEE: The defense is satisfied?

LIEUTENANT GORDON: The defense is satisfied.

COLONEL PARMELEE: Is there objection to this exhibit?

LIEUTENANT GORDON: No objections sir.

COLONEL PARMELEE: It will be so admitted into evidence.

(Prosecution's Exhibit 3 received in evidence)

BY LIEUTENANT DREYER:

Q Rin, where was Lt. Huffcutt's body after you fired the first shot?

A I fired the first shot in the air so Lt. Huffcutt was still walking towards the exterior.

Q What did he do after you fired the first shot?

A He continued walking towards the exterior.

Q When you fired the second shot, was he on the ground?

A I fired the second round towards him and he was about one meter from a narrow ditch, and he fell over in a shallow ditch near the guard path.

Q Did you examine his body?

A No, I did not. It was still time for me to be on duty and no relief had come for me so I could not get down from the observation post.

Q Were you in the observation post when they took his body away?

A Yes, I was.

LIEUTENANT DREYER: That is all.

RE-DIRECT EXAMINATION

BY LIEUTENANT GORDON:

Q When you were interviewed by the American officer and the interpreter in December at branch camp No. 5, where, in that camp was the interview held?

A I was interviewed in the food storage room, near the barracks.

Q Was that inside or outside the wire fence which surrounded the compound?

A This is outside of the wire fence.

Q Did the officer, American officer, have a side arm with him?

A Yes, he had a revolver.

Q Did the officer and the interpreter stay together at all times during the interview?

A Yes, they stayed together.

Q Did either of them leave the room at any time during the interview?

A Yes, during the interview the interpreter went to the latrine. During that time the investigating officer fingered his revolver and frightened me.

Q Was there anybody else present at the the interview?

A I do not recall.

LIEUTENANT DREYER: What was that last question?

(Last question read back)

LIEUTENANT GORDON: No further questions, sir.

COLONEL PARMELEE: Re-cross examination?

LIEUTENANT DREYER: No, sir.

COLONEL PARMELEE: Questions by the Commission?

EXAMINATION BY THE COMMISSION

BY CAPTAIN HENDRICKS:

Q Referring again to your sketch, defense Exhibit "A", will you again point out this double apron fence? (to interpreter) Will you have him come here and do it?

A (pointing) This is the outer barbed wire fence and there is about one meter between the two fences.

Q Now, will you indicate on there the location of the prisoner's garden?

A It is within this area (pointing) between the barracks and the latrine. Do you want this drawn?

Q Yes.

(Witness drawing on diagram)

INTERPRETER: He said it extends from the latrine, between the latrine and all the way out.

Q There is no prisoners' gardens east of the latrine.?

A. There is no garden area east of the latrine. It is all grass which is about 2 inches tall.

Q Can you indicate on here the garden that belonged to the American that was killed?

A That I do not know.

CAPTAIN HENDRICKS: That is all.

COLONEL PARMELEE: (to the accused) All right, resume the stand and be seated.

COLONEL HAUSE: Did you go on duty in the guard tower after you shot the American?

A Yes, that is so.

COLONEL HAUSE: No further questions.

LIEUTENANT DREYER: I have some more questions.

RECROSS EXAMINATION

BY LIEUTENANT DREYER:

Q What have you got in your left hand?

A That is a sketch.

Q Now, is that a copy of Defense Exhibit A?

A Yes, that is the same as what the officer is holding in his hand.

Q Now, look at the position of the sentry tower on Defense Exhibit A. Was that sentry tower inside the double barbed wire fence or is it outside the double barbed wire fence?

A It is near the inside of the barbed wire.

Q Now, let me go over that again so there is no mistake.

Is it your contention that on August 11, 1944, the tower or observation post in which you were stationed was within the prison compound?

A Yes, it was within the camp.

Q So you could have, after the shot was fired, descended from the tower and walked over to where Lieutenant Huffcutt was lying without passing through any barbed wire fence, is that true?

A Yes, I could go to Lieutenant Huffcutt without passing the barbed wire fence as there isn't any.

Q What is this shaded portion between the barbed wire

fence and inscription "Position first shot toward sky".

A This is a small pile of little rocks, made of gravel.

Q Is that the path on which the perimeter guard would march?

A Yes, that is the path that the guard walks.

Q Where did the Japanese sentry march when your relief came?

A They come from the guardhouse on this path here. (Indicating on map.)

Q The same path on which the Americans marched?

A This is path that the Americans walked, the American guards walked and at that time there were no American guards walking the posts.

LIEUTENANT GORDON: Let the record show that the witness indicated that the inner path is the one used by the American guards.

A (Continued) At the time the sentry tower was outside of this barbed wire when the guard on this sentry tower was guarding the outside, they used American guards on this path but when the guard tower was moved inside the barbed wire they did away with the American guards.

Q Was the sentry tower moved inside the barbed wire after Lieutenant Huffcutt was shot?

A It was moved inside before Lieutenant Huffcutt was killed.

Q So that when you and all the other guards were on duty you all marched inside the prison compound with your weapons. Is that true?

A Yes, we walked the inner path.

Q And the guardhouse was inside the prison compound, is that correct?

A Yes, it was inside.

LIEUTENANT DREYER: That is all.

LIEUTENANT GORDON: No further questions, sir.

COLONEL PARMELEE: Are there any questions by the Commission?

(No response.)

COLONEL PARMELEE: The witness is excused.

(Witness excused.)

LIEUTENANT GORDON: At this time I want to include in the record a stipulation entered into between the counsel for the prosecution and the counsel for the defense that requests for the apprehension of Lieutenant Toshino, acting commander at Cabanatuan in August 1944, and Sergeant Hattori Sho, Sergeant of the Guard on that day, have been made by the defense and the fact that they have not been found shall not be considered prejudicial to the defendant.

LIEUTENANT DREYER: The prosecution has no objection.

COLONEL PARMELEE: The stipulation agreed to by the prosecution is approved by the Commission.

LIEUTENANT GORDON: I call as the next witness for the defense Lieutenant Satoru Suehiro.

SATORU SUEHIRO

called as a witness by the defense, having been first duly sworn, was examined and testified as follows through Interpreters Osato, Motoyoshi, and Baba:

DIRECT EXAMINATION

BY LIEUTENANT GORDON:

Q What is your name?

A Satoru Suehiro.

Q On August 1944 what was your rank in the Japanese Imperial Army?

A Second Lieutenant in Medical Corps.

Q When did you join the Japanese Army?

A 30 July 1941.

Q When did you come to the Philippine Islands?

A 24 December 1941.

Q Were you ever on duty at Cabanatuan prisoner-of-war camp?

A Yes, I have.

Q When did you first come to the Cabanatuan prisoner-of war camp?

A I came to Cabanatuan the latter part of July 1942 and left in October.

LIEUTENANT DREYER: Of what year?

A 1942.

Q (By Lieutenant Gordon) Do you remember an incident at Cabanatuan in the month of August 1944 which involved the killing --

In 1942, did you say?

A July, 1942 until October 19 -- I arrived in July of 1942 and assumed my position at the prison camp in October

1942 until the present.

LIEUTENANT DREYER: The present?

Q (By Lieutenant Gordon) Were you there in August 1944?

A Yes, I was.

Q Do you remember an incident in Cabanatuan in the month of August 1944 which involved the killing of an American officer, a prisoner of war?

A Yes, I recall the incident.

Q Do you recall what day in August it occurred?

A I think it was the 10th or 11th of August.

Q At about what time of day?

A Shortly before noon.

Q Do you recall examining the corpse of the American officer?

A Yes, I did.

Q When you examined the corpse, what did you find?

A When I examined the body he was dead. There was a wound.

Q Where was the wound?

A The wound was from -- it entered the left arm into the lower abdomen, it went through the left arm and lodged in the lower abdomen. There was only one hole.

Q There was only one hole? Where?

A In the abdomen.

Q How do you know that the bullet lodged in the abdomen?

A Since there was only one wound in the lower abdomen I assumed that the bullet had lodged in there.

Q How soon after the incident of the killing did you arrive on the scene?

A About ten minutes later.

Q Was the person who had been shot, dead at the time?

A Yes, the officer was already dead.

Q In your opinion as a doctor, how soon could a bullet wound such as this in the abdomen cause death?

A It all depends on the way the bullet hits, but in this case--and also depends on the health of the person--but in this case it was between two to five minutes.

Q Where did you find the body when you arrived?

A It was in a shallow ditch.

Q I show you a copy of defense Exhibit "A" and ask you to point out to the Commission where you found the body?

A This narrow ditch (pointing to this mark here)

LIEUTENANT GORDON: Let the record show that the witness pointed to the ditch on the diagram, on the easterly side of the outside path.

Q When you arrived at the body, who was there?

A When I arrived, 2nd Lt. Kaseno was there.

Q Was there anybody else there?

A After Lt. Kaseno and I arrived, then M/Sgt. Hata arrived.

Q After you examined the body and found he was dead, what did you order done with it?

A Later, 1st Lt. Toshino arrived and then they brought a stretcher and carried the body to the morgue.

Q Do you know whether the body was examined by the American medical officers?

A At the morgue Lt. Col. Craig examined the body.

Q I believe you said that the bullet went through the American officer's left arm and entered the abdomen.

LIEUTENANT DREYER: I object to that; I don't believe the witness testified to that. I believe he testified there was a hole in the left arm and a hole in the abdomen, but I don't think he attempted to give an opinion as to the course of the bullet. If you want to refer back to the testimony --

LIEUTENANT GORDON: I will withdraw that question.

Q How many bullet wounds did you find in the body upon your examination?

A There were two wounds on the left arm where the bullet entered and went out and also a wound in the abdomen.

Q In your opinion, do you think it was the same bullet that caused both wounds?

LIEUTENANT DREYER: I object to that question on the ground that the witness has not been qualified as a ballistics expert.

COLONEL PARMELEE: Objection sustained.

Q From the course of the bullet which entered the arm and the course of the bullet into the abdomen, would you say that the wounds had been caused by the same bullet?

LIEUTENANT DREYER: I object to that on the grounds there is no evidence that the bullet was the same bullet that lodged in the abdomen.

LIEUTENANT GORDON: I am trying to qualify that. He is a medical man and I think he can tell from the type of wounds in the body.

COLONEL PARMELEE: State your objection.

LIEUTENANT DREYER: I am perfectly willing to have him testify as to the symptoms observed at the time of his examination

of Lt. Huffcutt's body, but I do not think we should hear his opinion as to the course of the bullet.

LIFUTENANT GORDON: I think he is the medical officer who examined the body and can testify as to the course of the bullet.

LIEUTENANT DREYER: If he can testify that the bullet went through the arm and entered the abdomen, I withdraw the objection. I don't want to impede your defense. Go ahead and ask him anything.

LIEUTENANT GORDON: Will the reporter please repeat the last question to the witness.

(Question read)

COLONEL PARMELEE: The prosecution withdraws objection to that question?

LIEUTENANT DREYER: Yes, sir

COLONEL PARMELEE: Very well, it will be answered.

A In my opinion, a single bullet entered into the left arm and also the abdomen.

Q Had the body been moved from its original place when you arrived there, as far as you know?

LIEUTENANT DREYER: I object; he couldn't possibly know the answer. He testified he came to the scene about ten minutes after the shooting.

Q Did the deceased bleed extensively because of the wound?

A Yes, he bled a lot due to the wound.

Q Was there any blood stains on the ground about the corpse?

A In the shallow ditch where the body was found, there was a lot of blood stains.

LIEUTENANT GORDON: That is all; no further questions.

CROSS EXAMINATION

BY LIEUTENANT DREYER:

Q Now, Lieutenant, you have no interest in the outcome of this case, do you?

COLONEL PARMELEE: The Commission will recess for 10 minutes.

(Short recess)

COLONEL PARMELEE: The Commission is in session.

A As for the result of this case, I don't think that I have any personal concern.

Q (By Lieutenant Dreyer) Your only desire is to tell the truth, is that right?

COLONEL PARMELEE: Will the reporter read the last answer?

(Answer referred to was read by the reporter.)

Q (By Lieutenant Dreyer) Your only desire is to tell the truth?

A Of course.

Q Now, tell us a little something about the layout of the Cabanatuan prisoner-of-war camp. Was there a double barbed wire fence running along the eastern boundary of the camp?

A Yes, there was a double wire fence on the east side of the camp.

Q Was there such a fence in August of 1944?

A Yes, there was. It is shown in this sketch.

Q Where was the sentry tower, inside or outside the double barbed wire fence?

A It was inside of the outer barbed wire.

Q Inside of the outer barbed wire fence. Was there an inner barbed wire fence?

A There was an inner barbed wire fence in the camp.

Q In August 1944?

A Yes, that is so.

Q Was that inner barbed wire fence between the gardens and the outer barbed wire fence?

A By the inner barbed wire fence I meant the inner barbed wire fence of the two barbed wire fences on the outside.

Q Let me start all over again.

Correct me if I am wrong.

At the easternmost boundary of Cabanatuan prison camp was a double barbed wire fence, is that correct?

A Yes, that is correct.

Q Now, within that double barbed wire fence was a sentry tower, is that correct?

A Yes, that is so.

Q Then, still proceeding in towards the center of the camp there is another barbed wire fence, is that true?

A Yes, there is one on the inside.

Q So that to go from the tower inside the camp one would have to pass through a barbed wire fence, is that correct?

A Yes, you could not enter unless you crossed a barbed wire fence. However, the fence, the inner fence on the east side was not complete.

Q Now, Lieutenant, you testified about these bullet wounds. Exactly where was the first bullet hole in the prisoner's arm?

A On the outside of the left arm. It was a little above the left joint.

Q What was the diameter of the hole on the outside of the left arm above the joint?

A The wound on the outside of the left arm was about one centimeter.

Q Was there a wound on the inside of the upper left arm?

A Yes, there was a wound on the inside of the left arm.

Q What was the diameter of that wound?

A About one and a half centimeters.

Q What was the diameter of the wound in the abdomen?

A Approximately one centimeter.

Q One centimeter. Now, you are a graduate physician, is that true?

A Yes, that is so.

Q Is it true that in the upper arm there is a large bone?

A Yes.

LIEUTENANT DREYER: That is all.

COLONEL PARMELEE: Is there any re-direct?

LIEUTENANT GORDON: I have one more question,, sir.

REDIRECT EXAMINATION

BY LIEUTENANT GORDON:

Q Did the bullet which went through the arm hit the bone in the arm?

A Yes, it hit the bone.

LIEUTENANT GORDON: That is all.

COLONEL PARMELEE: Any re-cross examination?

LIEUTENANT DREYER: No, sir.

COLONEL PARMELEE: Are there any questions by the Commission?

COLONEL HAUSE: I have some.

EXAMINATION BY THE COMMISSION

BY COLONEL HAUSE:

Q How many dead did you examine each day?

A Do you mean dead from bullet wounds?

Q Bullet wounds and other causes.

A Just once in a while, not every day.

Q Why do you remember this case so clearly?

A After I became a prisoner of war, about the latter part of November 1945 an investigating officer interviewed me in regard to this case and I have recalled the facts of this incident since that time.

Q As a physician, what vital spot was hit to kill so quickly?

A Because it hit the abdominal artery.

Q What was the length of time between the shooting and the examination?

A About ten minutes.

Q Did you examine the corpse in the region of the heart and the head?

A Yes, I did.

Q Did you find any bullet holes?

A No, I did not.

COLONEL HAUSE: No further questions.

COLONEL PARMELEE: Any further questions by the prosecution or the defense based upon the questions by the Commission?

LIEUTENANT GORDON: No further questions, Sir.

LIEUTENANT DREYER: One more.

RECROSS EXAMINATION

BY LIEUTENANT DREYER:

Q Did you witness the shooting?

A No, I did not.

LIEUTENANT DREYER: That is all.

COLONEL PARMELEE: The witness is excused.

(Witness excused.)

LIEUTENANT GORDON: The defense calls as its next witness Lt. Col. Iku Takasaki.

IKU TAKASAKI

a witness for the defense, being first duly sworn, was examined and testified as follows through the official interpreter:

DIRECT EXAMINATION

BY LIEUTENANT GORDON:

Q What is your name?

A Iku Takasaki.

Q In the month of August, 1944, what was your rank in the Japanese Imperial Army?

A Major.

Q When did you first come to Cabanatuan prison camp in 1944?

A About April 20, 1944, I went to Cabanatuan for about one night.

Q Were you assigned to Cabahatuan in August 1944?

A Around 28 August I was appointed as acting commandant.

Q When you came to Cabanatuan, did you receive a report of the shooting of an American, 2nd Lieutenant prisoner of war which happened on or about the 10 or 11th of August, 1944?

A I heard about the incident before I took my position.

Q Did Lt. Toshino make any report to you of the killing?

A I received an official report after I assumed my position on 28 August.

Q What was contained in that official report?

LIEUTENANT DREYER: Objection, if the Commission please. As I understand it, this witness is about to testify what was said to him by an investigating officer to whom a report

was made about the killing; that neither this witness saw it, neither Lt. Toshino who made the report saw it, and at the time the incident occurred, this witness was not in command of Cabanatuan. I can't see how that is competent.

LIEUTENANT GORDON: This is an official report that was made to the commandant of the prison camp. I think it should be accepted for its probative value.

COLONEL PARMELEE: It will be so accepted.

A The report stated that the prisoner of war was passing over the boundary line and the sentry seeing this called out for him to halt three or four times, but the prisoner of war did not take heed, so the sentry fired one shot in the air as a warning, but still the prisoner of war did not take heed, so he was shot.

Q Did you speak to an American colonel or lieutenant colonel about this incident after you were assighed to Cabanatuan?

A Yes, I did.

Q What was the name of that American officer?

A Lt. Colonel Wilson.

Q Had you ever come in contact with Colonel Wilson before you met him at Cabanatuan?

A Yes, I had met him previously.

Q When had you met Colonel Wilson previously?

A When I was group commander at the Davao colony, for about three months, I met Lt. Col. Wilson and became acquainted with him quite well.

Q Now, when you arrived at Cabanatuan, did Col. Wilson come to see you?

LIEUTENANT DREYER: I object to all this, sir; it is utterly immaterial and irrelevant; I can't see any purpose in the inquiry.

LIEUTENANT GORDON: You may not see it now, sir, but I am going to connect it up with some very important relationship concerning Lt. Huffcutt.

COLONEL PARMELEE: You feel you are laying a foundation for some important testimony here?

LIEUTENANT GORDON: I think so, which evidence was given to this witness by Col. Wilson, an American prisoner of war.

COLONEL PARMELEE: Very well, proceed.

A Yes, I met him.

Q Did you discuss with Col. Wilson the incident of the Huffcutt killing?

A I did.

Q What did Col. Wilson tell you about it?

A Lt. Col. Wilson said that 2nd Lt. Huffcutt had been ill and was not quite sane and he was constantly being watched by fellow prisoners, and Lt. Col. Wilson said that it appeared as though during the short moment when the fellow prisoner watching Lt. Huffcutt left him, he went through this fence.

Q Did you make any official inquiry or investigation about the Huffcutt killing after you came to Cabanatuan?

A The day after I assumed my position, I was escorted by Lt. Toshino and I made an investigation of the actual scene of the incident.

Q What I mean is, did you ever hold a hearing and question Kin Ryu Rin or American prisoners who might have seen the incident?

A I had heard previously the causes of the incident, so

I did not conduct an inquiry.

LIEUTENANT GORDON: No further questions.

CROSS EXAMINATION

BY LIEUTENANT DREYER:

Q Colonel, did you see this incident with your own eyes?

A I was in Manila and did not see the incident.

Q Did Lt. Toshino see it?

A That I do not know.

Q After the incident occurred and Lt. Toshino reported to you, did you talk to the guard about it? Did you talk to Kin Ryu Ring?

A I do not recall.

Q Do you mean you do not recall talking to a guard, or you do not recall the guard's name? Which?

A I did not know the name or know his face, and I don't think that I talked to him.

Q Would you swear under oath that you didn't talk to him?

A I can't recall very well.

Q Look at that man over there and I ask you whether you ever talked to him or not about this case.

A I do not know.

Q You do not know.

Now, this incident happened -- you testified before, you were in command at Cabanatuan. Is that a correct version of that testimony?

A Yes, that is right.

Q Were you ever interrogated by an officer of the War Crimes Investigating Detachment about this case?

A Yes, I was interrogated.

Q Did you sign a statement before T/4 James Iwanaga, Second Lieutenant Claude M. Owens, and Second Lieutenant Fujio J. Asano?

A I do not recall the names but I remember that I signed a statement in regards to the Huffcutt incident.

Q That is right, you were questioned about it right here in the High Commissioner's Stockade, weren't you?

A Yes, I think it was here.

Q And after the statement was written out it was translated to you by a Nisei interpreter, wasn't it?

A I think that was it.

Q And you signed your name, didn't you?

A Yes.

Q And that is your signature, isn't it?

A Yes, that is so.

Q And you said over your signature "I swear that I have heard the above statement read to me by T/4 Iwanaga, that I understand it and that it is true." You said that then,

didn't you?

A Yes, that is so.

LIEUTENANT DREYER: I offer this statement in evidence. This will be Prosecution Exhibit No. 4.

LIEUTENANT GORDON: I would like to object. The witness is on the stand, he can be cross examined; if he said anything different now it can be brought out in open court.

LIEUTENANT DREYER: I will withdraw my offer of this document in evidence at the present time and renew the offer at some later point. Will you mark it for identification only as Prosecution Exhibit No. 4?

COLONEL PARMELEE: It will be so marked.

Q (By Lieutenant Dreyer) Now, Colonel Takasaki, did you say in this statement: "About one month after I took charge of Cabanatuan prison I went to Manila on business. When I returned Captain Toshino told me that three days before, during my absence, Second Lieutenant Huffcutt, an American prisoner who had been suffering from hysteria, had been seen by a guard past the line of markers inside of the prison fence." Did you say that?

(Interpreter and witness engage in long conversation.)

LIEUTENANT DREYER: Now, there is no necessity for a long winded discourse from the witness and I want the record to show that there has been a lot of palaver back and forth. I asked a question which required a simple yes or no answer. I asked him whether he said that or not and I want a yes or no answer.

COLONEL PARMELEE: I ask that the interpreter press for a brief answer, either yes or no.

A I do not recall making such a statement.

Q (By Lieutenant Dreyer) All right. Now, do you recall making this statement: "When I heard about this I told the guard whose name I cannot recall, that he should in the future do everything possible to prevent escapes before the killing of prisoners"?

(Long conversation ensues between interpreter and witness.)

Q Did you say it or didn't you?

A I do not remember.

Q I now offer Prosecution Exhibit 4 in evidence.

LIEUTENANT GORDON: The same objection is made this time, if the Commission please. There is no showing how this statement was obtained, the foundation, or under what circumstances.

LIEUTENANT DREYER: The man has identified his signature, he has admitted that he wrote his signature following: "I swear that I have heard the above statement read to me by T/4 Iwanaga, that I understand it and it is true", and it is absolutely contradictory of everything he has said here today.

COLONEL PARMELEE: The statement in question will be admitted as Prosecution Exhibit No. 4.

(Prosecution Exhibit No. 4 was received in evidence.)

The Commission will take a ten-minute recess.

(Short recess.)

Q Now, Colonel Takasaki, where were you stationed immediately prior to coming to Cabanatuan as commandant?

A I was the commandant of the Davao Colony.

Q And also commandant of the sub-branch camp at Lasang Airfield?

A It is only the Colony.

Q When were you relieved as commandant at Davao?

LIEUTENANT GORDON: I object to this question, sir, on the grounds that it is immaterial, irrelevant and incompetent to the issues involved. Now, I think if it is allowed to continue, the witness should be warned of his rights.

LIEUTENANT DREYER: The purpose of this inquiry, if the Commission please, is to establish the date on which this man came to Cabanatuan. He testified on direct examination he took over at Cabanatuan on 28 August 1944, or 17 days after the killing occurred. It is my belief he is putting himself at Cabanatuan after the killing occurred, to avoid responsibility. I want to show he was commandant as he said in the statement admitted in evidence as Prosecution Exhibit 4 at the time this killing occurred.

LIEUTENANT GORDON: Whether he was in Cabanatuan at the time, he testified, and it was accepted by the prosecution, that he was not at Cabanatuan on the date the incident took place, and I think that is sufficient for this case.

LIEUTENANT DREYER: It is a question of credibility, sir.

COLONEL PARMELEE: I was going to say, if you are trying to establish credibility, go ahead and proceed.

LIEUTENANT GORDON: I think he should be told of his rights, and that what he testifies can be used against him

in further trials and that he need not say anything that might incriminate him.

LIEUTENANT DREYER: This witness is an alien enemy, and is not entitled to the protection of the Fifth Amendment of the Constitution of the United States. Now will you reread that question, please?

(Question read.)

A August 8th.

Q To what were you assigned on August 8th?

A I was taken by air to Malay-Palay and then to Lipa, where the plane landed and did not continue from there that night.

Q Now, you haven't answered my question. You testified that you were relieved as commandant on August 8th, and I asked you to what you were assigned after that time.

A Since the Colony was closed, I returned to Manila to report.

Q Was Lieutenant General Kou your commandant?

A Yes.

Q When you arrived in Manila did General Kou give you another assignment?

A At that time I was not assigned.

Q When did you receive your next assignment?

A In April I received instructions that since the Colony was to close in about two weeks, and after that he was to assume his duty at Cabanatuan.

LIEUTENANT DREYER: (to interpreter) Are you sure you have that answer correct? It doesn't make sense.

A So, at that time I did not receive any instructions from General Kou.

Q Let me put it this way: Prior to August 8, 1944 did you receive orders that immediately upon the closing

of the prison camp at Davao, that you were to assume command at Cabanatuan?

A I had heard that that was the expectation.

LIEUTENANT DREYER: That is all. No further questions, sir.

COLONEL PARMELEE: Redirect?

LIEUTENANT GORDON: No further questions.

of the prison camp at Davao, that you were to assume command at Cabanatuan?

A I had heard that that was the expectation.

LIEUTENANT DREYER: That is all. No further questions, sir.

COLONEL PARMELEE: Redirect?

LIEUTENANT GORDON: No further questions.

COLONEL PARMELEE: Questions by the Commission?

COLONEL HAUSE: I have one.

EXAMINATION BY THE COMMISSION

BY COLONEL HAUSE:

Q Can you point out the one who did the killing?

INTERPRETER OSATO: The killing of Lieutenant Huffcutt?

COLONEL HAUSE: Yes, the killing in question.

A Yes, I can.

LIEUTENANT DREYER: Indicating the accused.

COLONEL HAUSE: That is all.

COLONEL PARMELEE: Let the record show that the witness pointed out the accused as the killer of Lieutenant Huffcutt.

LIEUTENANT GORDON: I would like the record to show that the defendant is the only other Japanese prisoner of war in the room at the time.

LIEUTENANT DREYER: Isn't the man on his right a Japanese prisoner of war?

LIEUTENANT GORDON: This man here?

LIEUTENANT DREYER: Yes.

LIEUTENANT GORDON: I don't really know whether his status is that of a prisoner of war or civilian internee.

I withdraw my request.

COLONEL PARMELEE: Very well.

LIEUTENANT DREYER: One more question and then I will subside.

RECROSS EXAMINATION

BY LIEUTENANT DREYER:

Q Colonel, at the time the shooting occurred, was the sentry tower inside the double barbed wire fence or outside the double barbed wire fence?

A I wasn't there so I do not know.

Q When you arrived was the guard tower inside the double barbed wire fence or outside the double barbed wire fence?

A It was inside of the fence.

Q And the guardhouse, too?

A The guardhouse was inside of the outer fence.

Q Then there was a barbed wire fence between the guardhouse and the prison compound, is that right?

A There was an inner line.

Q Barbed wire?

A Yes.

Q Was there an inner line of barbed wire between the guard tower and the prison compound?

A Yes, there was an inner line.

Q Of barbed wire?

A Yes.

LIEUTENANT DREYER: That is all.

LIEUTENANT GORDON: This description of the compound that you just gave is as you saw it as you arrived on the 28th of August at Cabanatuan, is that so?

A Yes.

LIEUTENANT GORDON: No further questions.

COLONEL PARMELEE: The witness is excused.

(Witness excused.)

LIEUTENANT GORDON: The defense rests, your Honor.

LIEUTENANT DREYER: The prosecution has but one rebuttal witness.

COLONEL PARMELEE: The prosecution may call its witness.

JAMES IWANAGA

called as a witness by the Prosecution, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY LIEUTENANT DREYER:

Q State your name, rank and serial number.

A T/4 James Iwanaga, 37710490.

Q What is your duty or assignment?

A Presently I am court interpreter at War Crimes.

Q What were you doing in November and December of 1945?

A I was personal interpreter assigned to an interrogating officer from the War Crimes Investigating Detachment.

Q Who was that investigator?

A Lieutenant Claude Owens.

Q Were you investigating atrocities at Cabanatuan prison camp?

A Yes, sir.

Q During the course of that investigation did you interrogate Japanese prisoners with respect to the killing of Lieutenant Robert Huffcutt?

A Yes, sir.

Q Did you interrogate Kin Ryu Rin?

A Yes, sir.

Q Had you interrogated prisoners about the killing of Lieutenant Huffcutt before you interrogated Kin Ryu Rin?

A Yes, sir.

Q What did those prisoners tell you about the killing of Lieutenant Huffcutt?

A Well, before, we wanted to find out who definitely

killed Lieutenant Huffcutt and I think we interrogated about 10 to 15 other prisoners concerning this case and they all stated that Kin Ryu Rin was on guard that day and shot him and Kin Ryu Rin was about the last man we interrogated in that case.

Q Did you ask him if he had shot Lieutenant Huffcutt?

A Yes, sir.

Q What did he say?

A At first he denied it completely but we showed him statements taken from other prisoners concerning this case and also told him that if he didn't come out with it we would bring the rest of the prisoners in front of him and it was about 10 to 15 minutes later that he told us he did shoot Lt. Haffcutt.

Q Who was present when you interrogated Kin Ryu Rin?

A Just me and Lieutenant Owens.

Q Was he wearing a sidearm at that time?

A No, he wasn't.

Q How can you be so sure he wasn't?

A Well, any interrogating officer knows they are not allowed to carry sidearms interrogating any prisoners and Lieutenant Owens was an army officer so that I don't think he did.

Q Where did this take place?

A At Branch Camp 5, American Engineer Division.

Q Was there a place to deposit sidearms as you entered the prison compound?

A Well, he usually placed it in the orderly room, that is the common practice, sir.

Q Have you ever, during the entire time you were with Lieutenant Owens as his personal interpreter, seen him carry a weapon into that prison compound?

A No, I did not.

Q Did you also participate in the interrogation of Major Takasaki?

A Yes, I did.

Q Did Takasaki tell you during that interrogation that the killing of Lieutenant Huffcutt occurred while he was in command?

A Yes, he did.

Q Did he tell you that he spoke to Kin Ryu Rin about it?

A I can't remember that, sir.

Q Will you tell me what practice you and Lieutenant Owens pursued before a Japanese prisoner signed his name to a statement that you took from him?

A Well, first we, I would tell the prisoner that the statement he is about to make, to be sure it is the truth and after the statement was made we usually take down whatever the statement that he said in writing and I would tell him that the statement that he just made is made to us without any duress, or any threat, and if it is the truth we will ask him to sign it and they usually do sign it.

Q Do you translate it to him word for word?

A Yes, I translate it to them word for word.

Q Did you do that in the case of Kin Ryu Rin, and again in the case of Takasaki?

A Yes.

Q Did any one of them make any objection to your translation?

A No, they did not.

Q Was that translation a true and correct translation of your questions?

A Yes.

LIEUTENANT DREYER: No further questions.

CROSS EXAMINATION

BY LIEUTENANT GORDON:

Q Do you recall where the examination of Kin Ryu Rin took place at this prisoner of war camp?

A Yes, I do.

Q Where was that?

A They had a tent outside the compound.

Q It was outside the compound?

A Yes, it was.

Q And couldn't he have carried his weapon there?

A But --

Q Answer the question.

A No, but it was outside the compound.

Q It was outside the compound?

A It was outside the compound where he went to talk to the prisoners.

Q Isn't it possible that Lt. Owensmight have walked to the tent?

A Before interrogating the prisoners, he must go into the orderly room and get permission and then they would bring the prisoner out to you.

Q Then, on occasion, couldn't Lt. Owens have gone directly into the tent and sent you in for the prisoner?

A He never did that, sir.

Q You don't recall him doing it on this occasion?

A No, sir.

Q Do you recall leaving the tent at any time during the interview so that Lt. Owenswas alone with Kin Ryu Rin?

A Yes.

Q And how long were you away would you say?

A It must have been two or three minutes, maybe four.

Q Where did you go?

A To the latrine.

Q You have interrogated a great number of Japanese prisoners of war, haven't you?

S Yes, sir.

Q Do you have any difficulty in making them understand what you are trying to get from them?

A No, sir.

Q They answer all your questions directly just as you are answering mine?

A Yes, sir.

LIEUTENANT GORDON: That is all

RE-DIRECT EXAMINATION

BY LIEUTENANT DREYER:

Q When you commence an interrogation of a Japanese prisoner, do they always answer your questions truthfully or in the same way that they answer then when you finish?

A I don't get that, sir.

LIEUTENANT DREYER: I will withdraw that question. No further questions.

LIEUTENANT GORDON: No further questions.

COLONEL PARMELEE: Questions by the Commission? Appear to be none. The witness is excused.

(Witness excused)

LIEUTENANT DREYERY If the Commission please, I am somewhat perturbed by the nature of this cross examination. I don't like it to appear in the record that Lt. Owens is the type

of an American Army officer that would go around brandishing pistols under the nose of Japanese prisoners and I think it would be fair to him that he be given an opportunity to come into court and testify as to his version of what happened during his examination of Kin Ryu Rin. I think it is clear enough, but I think it might be proper for Lt. Owens to give his account of what occurred. I will call him unless the defense stipulates that if called, he will testify that he did no such thing.

COLONEL PARMFLEE: Does the defense so desire to stipulate?

LIEUTENANT GORDON: Well I think the record shows that the interpreter who accompanied Lt. Owens has, shall we say, cleared him?

LIEUTENANT DREYER: Yes, sir, but there is a gap of four or five minutes, and I don't want the stigma to be put on a war crimes officer.

LIEUTENANT GORDON: I don't think, if there is any stigma to be attached, that this is the proper place for it, and I will withdraw any remarks of mine which intimated that Lt. Owens threatened the prisoner at the time of the interrogation.

COLONEL PARMFLEE: That satisfies the prosecution?

LIEUTENANT DREYER: Yes, and the prosecution rests.

COLONEL PARMFLEE: The defense has no further witnesses?

LIEUTENANT GORDON: No further witnesses, and the defense rests.

COLONEL PARMFLEE: The Commission would like to recall Colonel Ball as a witness.

JOHN H. BALL

being recalled as a witness for the Commission, was reminded that he was still under oath, and was further examined and testified as follows:

LIEUTENANT DREYER: Colonel Ball, you are reminded that you are still under oath.

Colonel Ball: Yes.

EXAMINATION BY THE COMMISSION

BY CAPTAIN HENDRICKS:

Q Will you hand the colonel a copy of Defense Exhibit "A", please. Considering this sketch, Colonel Ball, will you qualify it as poor, good, excellent, or whatever you think it is?

A I think I can draw a better one on the blackboard right here. I think it is very poor. I don't think it gives much information at all as to the location of the paths and the buildings. There is no information.

Q Will you attempt to point out to us any large errors and qualify them for us, if possible?

A The sentry tower, starting on the east side—this, I assume—oh, it is marked south, there, and that corner was the southeast corner of the entire compound, not as shown here. The barbed wire fence, which is shown here in curlicues, double barbed wire fence, was about one meter apart. The sentry tower and path on which the sentries were changed, the Japanese sentries, was outside the barbed wire fence. The path of the perimeter guard, the American guard, was inside, approximately 30 or 35 feet from that fence. That is--inside of that, at that particular position, was a ditch about-at that point, about 4 feet deep. That was the main drainage ditch from the latrines; line of latrines all drained into that and it made a curve going out under the barbed wire fence. I am not positive whether it was north or south of the tower. The tower was very close. There the ditch was very deep outside. Now, on the inside,

of that drainage ditch, where the latrines were, was the original perimeter guard path which was no longer used. Now, taking on this chart here, the line, the broken line described to indicate the position or the direction of travel of the man, the gardens were up inside of that second--the unused path.

Q These are the latrines?

A Yes, that line were the latrines. They were on a general line with that path. Now, the boundary line farther up in this same group, group 2, was not the path, but was this deep drainage ditch. As we come further down, there isn't any drainage ditch and the path itself becomes the boundary line of this old path and later the new path. Now, certainly we didn't have any Japanese guards walking around inside the barbed wire fence. On several occasions, when there was a large attack there, guards were placed inside the fence, Japanese guards, and they were strengthened; they had on the outside around these towers machine gun emplacements that the Americans helped build it. They were on the outside of the fence, not on the inside. This is not a good picture nor does it give a good idea of the lay of the land.

CAPTAIN HENDRICKS: That is all I want.

COLONEL PARMELEE: The witness is excused.

(Witness Excused)

COLONEL PARMELEE: Has the defense a closing argument?

LIEUTENANT GORDON: The defense will waive its closing argument.

LIEUTENANT DREYER: And so will the prosecution.

COLONEL PARMELEE: The Commission will now recess until

1330 hours, 30 April 1946, and will consider the case in the meantime.

Whereupon, at 1605 hours, 29 April 1946, the Commission recessed to be reconvened at 1330 hours, 30 April 1946.

R E S T R I C T E D

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

AG 000.5 (5 Dec 45) LS

APO 500
5 December 1945

SUBJECT: Regulations Governing the Trials of Accused War Criminals.

TO : Commander-in-Chief, United States Army Forces, Pacific, APO 500
Commanding General, Sixth Army, APO 442
Commanding General, Eighth Army, APO 343
Commanding General, XXIV Corps, APO 235

The following rules and regulations will govern the trials of persons, units and organizations accused as war criminals.

1. ESTABLISHMENT OF MILITARY COMMISSIONS.

a. General Persons, units and organizations accused as war criminals will be tried by military commissions to be convened by, or under the authority of, the Supreme Commander for the Allied Powers.

b. Number and Types. The Commissions will be established dependent upon the number, nature of the offenses involved and the offenders to be tried. Such commissions may include, among others, international military commissions consisting of representatives of several nations or of each nation concerned, appointed to try cases involving offenses against one (1) or more nations.

2. JURISDICTION.

a. Over Persons. The military commissions appointed hereunder shall have jurisdiction over all persons charged with war crimes who are in the custody of the convening authority at the time of the trial.

b. Over Offenses.

(1) Military commissions established hereunder shall have jurisdiction over all offenses including, but not limited to, the following:

(a) The planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

USA vs. KIN MOU MIN
Prosecution Exhibit No. 1
20 April 1946

(b) Violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory; murder or ill-treatment of prisoners of war or internees or persons on the seas or elsewhere; improper treatment of hostages; plunder of public or private property; wanton destruction of cities, towns or villages; or devastation not justified by military necessity.

(c) Murder, Extermination, enslavement, deportation and other inhuman acts committed against any civilian population before or during the war, or persecutions on political, racial or religious grounds in execution of, or in connection with any crime defined herein, whether or not in violation of the domestic laws of the country where perpetrated.

(2) The offense needmnot have been committed after a particular date to render the responsible party or parties subject to arrest, but in general should have been committed since or in the period immediately preceding the Mukden incident of September 18, 1931.

3. MEMBERSHIP OF COMMISSION:

a. Appointment. The members of each military commission will be appointed by the Supreme Commander for the Allied Powers, or under authority delegated by him. Alternates may be appointed by the convening authority. Such alternates shall attend all sessions of the commission, and in case of illness or other incapacity of any principal member, an alternate shall take the place of that member. Any vacancy among the members or alternates, occurring after a trial has begun, may be filled by the convening authority, but the substance of all proceedings had and evidence taken in that case shall be made known to that new member or alternate in open court before the trial proceeds.

b. Number of Members. Each commission shall consist of not less than three (3) members.

c. Qualifications. The convening authority shall appoint to the commission persons whom he determines to be competent to perform the duties involved and not disqualified by personal interest or prejudice, provided that no person shall be appointed to hear a case which he

personally investigated, nor if he is required as a witness in that case. A commission may consist of Army, Navy or other service personnel, or of both service personnel and civilians. One specially qualified member shall be designated as the law member whose ruling is final insofar as concerns the commission on an objection to the admissibility of evidence offered during the trial.

d. Voting. Except as to the admissibility of evidence, all rulings and findings of the commission shall be by majority vote, except that conviction and sentence shall be by the affirmative votes of not less than two-thirds (2/3) of the members present.

e. Presiding Member. In the event that the convening authority does not name one of the members as the presiding members, the senior officer among the members of the commission present shall preside, or such other member as the senior officer may designate.

4. PROSECUTORS.

a. Appointment. The convening authority shall designate one or more persons to conduct the prosecution before each commission. Where offenses involve nationals of more than one nation, each nation concerned in the discretion of the convening authority, may be represented among the prosecutors.

b. Duties. The duties of the prosecutors are:

(1) To prepare and present charges and specifications for reference to a commission.

(2) To prepare cases for trial and to conduct the prosecution before the commission of all cases referred for trial.

5. POWERS AND PROCEDURE OF COMMISSIONS:

a. Conduct of the Trial. A commission shall:

(1) Confine each trial strictly to a fair, expeditious hearing on the issues raised by the charges, excluding irrelevant issues or evidence and preventing any unnecessary delay or interference.

(2) Deal summarily with any contumacy or contempt, imposing any appropriate punishment therefor.

(3) Hold public sessions except when otherwise decided by the commission.

(4) Hold each session at such time and place as it shall determine, or as may be directed by the convening authority.

b. Rights of the Accused. The accused shall be entitled:

(1) To have in advance of trial a copy of the charges and specifications clearly worded so as to apprise the accused of each offense charged.

(2) To be represented, prior to and during trial by counsel appointed by the convening authority or counsel of his own choice, or to conduct his own defense.

(3) To testify in his own behalf and have his counsel present relevant evidence at the trial in support of his defense, and cross-examine each adverse witness who personally appears before the commission.

(4) To have the substance of the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them.

c. Witnesses. The Commission shall have power:

(1) To summon witnesses and require their attendance and testimony under penalty, to administer oaths or affirmations to witnesses and other persons and to question witnesses.

(2) To require the production of documents and other evidentiary material.

(3) To delegate to the Prosecutors appointed by the convening authority the powers and duties set forth in (1) and (2), above.

(4) To have evidence taken by a special commissioner appointed by the commission.

d. Evidence.

(1) The commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or such as in the commission's opinion would have probative value in the mind of a reasonable man. The commission shall

apply the rules of evidence and pleading set forth herein with the greatest liberality to achieve expeditious procedure. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted:

(a) Any document irrespective of its classification which appears to the commission to have been signed or issued by any officer, department, agency or member of the armed forces of any government without proof of the signature or of the issuance of the document.

(b) Any report which appears to the commission to have been signed or issued by the International Red Cross or a member thereof, or by a doctor of medicine or any medical service personnel, or by an investigator of intelligence officer, or by any other person whom the commission considers as possessing knowledge of the matters contained in the report.

(c) Affidavits, depositions or other signed statements.

(d) Any diary, letter or other document, including sworn or unsworn statements, appearing to the commission to contain information relating to the charge.

(e) A copy of any document or other secondary evidence of its contents, if the original is not immediately available.

(2) The Commission shall take judicial notice of facts of common knowledge, official government documents of any nation, and the proceedings, records and findings of military or other agencies of any of the United Nations.

(3) A commission may require the prosecution and the defense to make a preliminary offer of proof, whereupon the commission may rule in advance on the admissibility of such evidence.

(4) If the accused is charged with an offense involving concerted criminal action upon the part of a military or naval unit, or any group or organization, evidence which has been given previously at a trial resulting in the conviction

of any other member of that unit, group or organization, relative to that concerted offense, may be received as prima-facie evidence that the accused likewise is guilty of that offense.

(5) The findings and judgment of a commission in any trial of a unit, group, or organization with respect to the criminal character, purpose or activities thereof shall be given full faith and credit in any subsequent trial, by that or any other commission, of an individual person charged with criminal responsibility through membership in that unit, group or organization. Upon proof of membership in that unit, group or organization convicted by a commission, the burden shall be on the accused to establish by proof any mitigating circumstances relating to his membership or participation therein.

(6) The official position of the accused shall not absolve him from responsibility, nor be considered in mitigation of punishment. Further, action pursuant to order of the accused's superior, or of his government, shall not constitute a defense, but may be considered in mitigation of punishment if the commission determines that justice so requires.

(7) All purported confessions or statements of the accused shall be admissible without prior proof that they were voluntarily given, it being for the commission to determine only the truth or falsity of such confessions or statements.

e. Trial Procedure. The proceedings at each trial will be conducted substantially as follows, unless modified by the commission to suit the particular circumstances:

(1) Each charge and specification will be read, or its substance stated, in open court.

(2) The presiding member shall ask each accused whether he pleads "Guilty" or "Not Guilty".

(3) The prosecution shall make its opening statement.

(4) The presiding member may, at this or any other time, require the prosecutor to

state what evidence he proposes to submit to the commission, and the commission thereupon may rule upon the admissibility of such evidence.

(5) The witnesses and other evidence for the prosecution shall be heard or presented. At the close of the case for the prosecution, the commission may, on motion of the defense for a finding of not guilty, consider and rule whether the evidence before the commission supports the charges against the accused. The commission may defer action on any such motion and permit or require the prosecution to reopen its case and produce any further available evidence.

(6) The defense may make an opening statement prior to presenting its case. The presiding member may, at this or any other time, require the defense to state what evidence they propose to submit to the commission, whereupon the commission may rule upon the admissibility of such evidence.

(7) The witnesses and other evidence for the defense shall be heard or presented. Thereafter, the prosecution and defense may introduce such evidence in rebuttal as the commission may rule admissible.

(8) The defense, and thereafter the prosecution, shall address the commission.

(9) The commission thereafter shall consider the case in closed session and unless otherwise directed by the convening authority, announce in open court its judgment and sentence, if any. The commission may state the reasons on which the judgment is based.

f. Record of Proceedings. Each commission shall make a separate record of its proceedings in the trial of each case brought before it. The record shall be prepared by the prosecutor under the direction of the commission and submitted to the defense counsel. The commission shall be responsible for its accuracy. Such record, certified by the presiding member of the commission or his successor, shall be delivered to the convening authority as soon as possible after the trial.

g. Sentence. The commission may sentence an accused, upon conviction, to death by hanging or shooting,

imprisonment for life or for any less term, fine or such other punishment as the commission shall determine to be proper. The commission may also order confiscation of any property of a convicted accused, deprive that accused of any stolen property or order its delivery to the Supreme Commander for the Allied Powers for disposition as he shall find to be proper or may order restitution with appropriate penalty in cases of default.

h. Approval of Sentence. No sentence of a military commission shall be carried into effect until approved by the officer who convened the commission, or his successor. Such officer shall have authority to approve, mitigate, remit in whole or in part, commute, suspend, reduce or otherwise alter the sentence imposed, or (without prejudice to accused) remand the case for rehearing before a new military commission; but he shall not have authority to increase the severity of the sentence. No sentence of death shall be carried into execution until confirmed by the Supreme Commander for the Allied Powers. Except as herein provided, the judgment and sentence of a commission shall be final and not subject to review.

6. RULE MAKING POWER.

Supplementary Rules and Forms. Each commission shall adopt rules and forms to govern its procedure, not inconsistent with the provisions hereof, or such rules and forms as may be prescribed by the convening authority or by the Supreme Commander for the Allied Powers.

By command of General MacARTHUR:

H.W. ALLEN,
Colonel, A.G.D.,
Asst Adjutant General.

R E S T R I C T E D

A CERTIFIED TRUE PHOTOSTAT COPY:

John R. Fleming

JOHN R. FLEMING
2nd Lt, ORD

Statement of RIN KIN RYU

1. Were you at Cabanatuah in August 1944?

   Yes.

2. Were you a guard at that time?

   Yes.

3. On August 11, 1944, did you shoot 2nd Lt. HUFFCUTT?

   Yes, I shot him.

4. Did you shoot him with a rifle?

   Yes.

5. Where were you at that time?

   I was standing guard on the 2nd shift of the 1st observation post.

6. How many rounds did you fire?

   Two rounds.

7. How many rounds hit?

   I later heard that the two rounds both hit.

8. Did you fire both rounds from the observation post?

   Yes.

9. After you fired on him, how long did it seem that he lived?

   He seemed to have died immediately.

10. What was your rank at that time?

    I was a civilian guard attached to the army.

I swear that this statement was made of my own free will and that there were no threats whatsoever.

/s/ Rin Kin Ryu

USA Vs. KIN RYU RIN
Prosecution Exhibit No. 2
29 April 1946

A F F I D A V I T

COMMONWEALTH OF THE PHILIPPINES)
) SS
CITY OF MANILA)

KENICHI J. TAKAKI being duly sworn deposes and says:

That he is a Technician 3rd Grade, Serial No. 39935169 in the Army of the United States and that he is a Japanese translator assigned to Allied Translator and Interpreter Service and that he is attached to the War Crimes Investigating Detachment.

That he has translated the attached questions and answers of RIN KIN RYU from Japanese into English, and that the foregoing translation is a true and correct translation of said questions and answers.

Kenichi J. Takaki
KENICHI J. TAKAKI, T/3, 39935169
Translation Section
War Crimes Investigating Detachment

Sworn before me this 6th day of March, 1946.

Austin F. Walter.
AUSTIN F. WALTER
2d Lt., MI

A CERTIFIED TRUE COPY:

John K. Fleming
JOHN K. FLEMING
2nd Lt, ORD

Pros Ex 3 RIN-KIN-RYU

Reference: Files 77, 78, 93, 99
Cabanatuan Prison

Branch Camp #5
20 December 1945

I, RIN KIN RYU, make the following statement of my own free will to 2d Lt. C. M. Owens and T/4 James Iwanaga. No threats or promises have been made to me. I realize that I do not have to make this statement and that it may be used in court against me.

I am 24. My home is in Taiwan, Taichu Shi, Kokan 172. I am a civilian attached to the Japanese Army.

In August, 1942 I arrived in the P. I. as part of a transportation unit. This unit was assigned to us to work. In September 1942 the unit, about 600 men, was sent to Cabanatuan Prison to be trained as guards. After two months training we went to work as guards at the Prison.

Concerning the killing of American prisoners, the only killing I know about happened when Major Takasaki was in charge of the prison in 1944. I was on guard duty one day at Post #1. Sgt. HATTORI was Sgt. of guards. I do not know who was corporal of guards. This post was a tower above the 8' high barbed wire fence which enclosed the prison - the tower being midway between two corners of the Prison. About 15 meters inside the prison had been fixed a line of wooden stakes, one foot high about 15' apart. They ran parallel to the outer fence. They had been set up a few weeks before the following incident took place. A rough, gravel foot path ran roughly parallel to the line of stakes. It twisted to some extent so that in places the path was inside the stake line, and at other places it was outside the stake line. The prisoners had a vegetable patch which was just inside the line of stakes. Some scattered vegetables were growing on the outside of the stake line.

Before the stakes had been set, the prisoners were allowed to walk all along the footpath, but not to cross it towards the fence. The footpath was the boundary for the prisoners. When the stakes were set up, our instructions from the guard company commander were that the prisoners should not be allowed to cross the stakes. The line of stakes replaced the footpath as the boundary.

While I was on guard duty, I saw a prisoner, Lt. HUFFCUT walking slowly directly towards the lines of stakes from the interior of the prison. He was walking in the vegetable patch. When he came within a few meters of the stake line I shouted to him, "No Good" - about four times. The Americans then shouted to him. I do not know what they said. He did not look up at me nor did he look back at them. Instead, while I was shouting he turned to the right and walked along a line roughly parallel to the line of stakes, but about two meters outside of the line of stakes. I did not think he was trying to escape. Instead I thought he was looking for vegetables. However, he was outside the line of stakes. The Americans were shouting. I was shouting and was excited. I think some one in the next guard house was shouting. I do not know who it was. It might have been another guard like myself, Ro Ko O. I believe the person said, "What are you waiting for, hurry up and shoot." The prisoner's back was to me. He was then about 50 meters away and still walking parallel to the stakes.

/s/ RKR

USA vs. KIN RYU RIN
Prosecution Exhibit No. 3
23 April 1946

Pros Ex 3 RIN-KIN-RYU

Reference: Files 77, 78, 93, 99
Cabanatuan Prison

Branch Camp #5
20 December 1945

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/s/ RKR

USA vs. KIN RYU RIN
Prosecution Exhibit No. 3
29 April 1946

I fired and missed. I fired a second round and hit him. I did not see where the body fell I was so excited. However, later after the body was removed I saw blood stains just outside the line of stakes.

Captain TOSHINO, commander of the guards, told me in the presence of all the guards that I had shoot too fast, that the killing was not necessary, that in the future everything should be done to avoid killing the prisoners. Major TAKASAKI later told me the same thing. I was not punish.

A few days after this killing an order came from H.Q. that the prisoners should not be allowed closer than one meter to the line of stakes.

I shot the prisoner because my orders were to not allow prisoners outside the line of stakes. I thought he was outside the line of stakes.

Concerning beatings of Americans by the guards I saw a mimeographed order from Lt. OKAMOTO, a guard company commander that if any prisoner refused to work or obey orders, to beat him. This order had OKAMOTO's name at the bottom. Later when TAKASAKI replaced Major IWANAKA as prison commander I saw the same order with TAKASAKI's name at the bottom. I also recall one day when TAKASAKI came into the farm on horseback. He told some of us guards that if prisoners did not work, to beat them.

I recall only two times beating prisoners. The first was when I had ordered a prisoner to pick large beans but he would pick only small ones so I hit him with my fists. I did not knock him to the ground. The second time was when I missed one man out of my 100 men detail. I found him sleeping. I slapped him in the face three times.

I saw all the supervisors of the farm beat prisoners, particularly bad were AIHARA, YOSHINAGA, KINUGASA. NUTA beat prisoners occasionally. Lt. YAMASAKI the farm officer witnessed many of them beatings. He would not interfere, rather he would just laugh at the beatings.

I was ordered by these Japanese non-coms on about three different occasions to beat American prisoners who were loafing: Sgts. NAGAI, FUJITA, and MISHIKAWA. I beat the specified prisoners with my hands.

I thought at the time it was wrong to beat them. However I beat them anyway because of orders.

This statement has been read to me in Japanese by T/4 James Iwanaga. I understand it and swear it is true.

/s/ RIN KIN RYU

WITNESSED:
/s/ James Iwanaga
/s/ Claude M. Owens 2d Lt., INF.

RIN is at Branch Camp #5, Manila. His detention has been requested.

CERTIFIED TRUE COPY:

Douglas E. Allis

DOUGLAS E. ALLIS
1st Lt., INF

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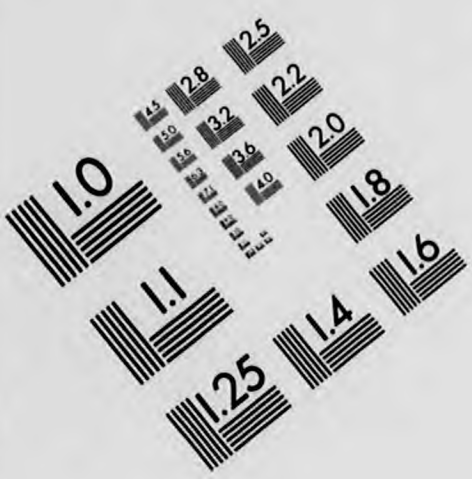

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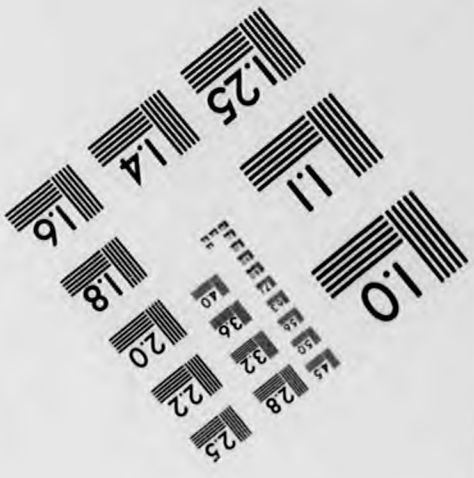

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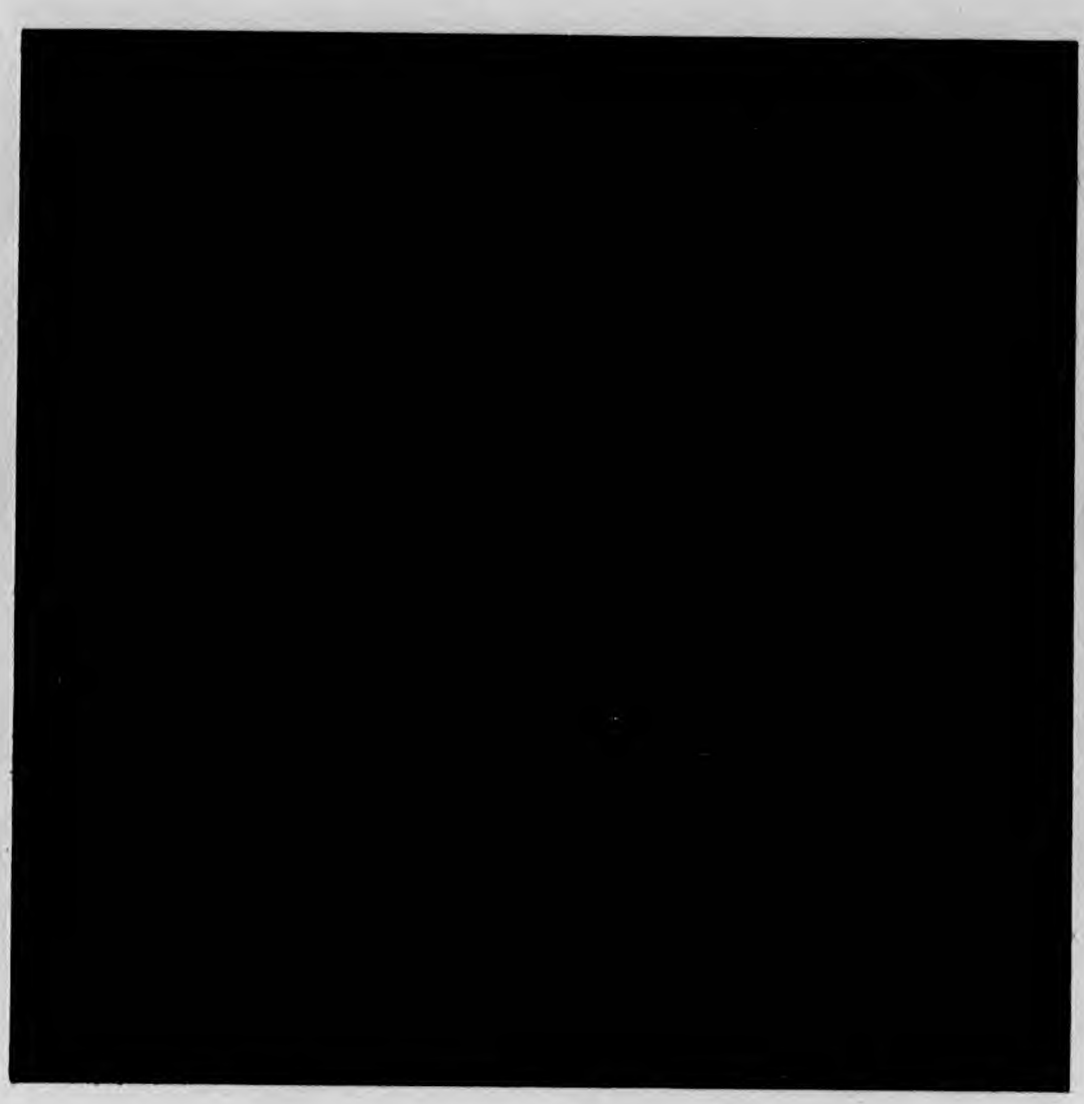

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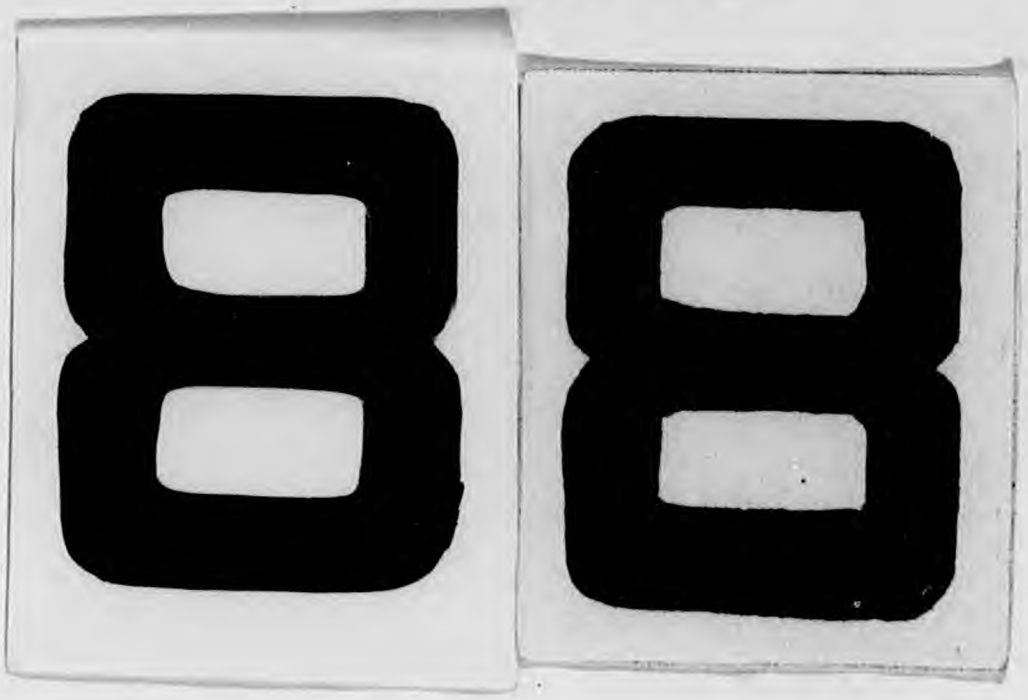

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